128-584

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~380.~~ 109

LOUIS B. SHIELDS, ADMINISTRATOR OF EMILY HOYT, DECEASED, APPELLANT,

vs.

ANNA HANBURY, MICHAEL ANDREW RORKE, LYMAN BAIRD, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 12, 1885.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Walter Q. Gresham, judge of the United States circuit court for the seventh circuit, and Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Friday, the twenty-first day of November, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

EMILY HOYT
vs.
ANNA HANBURY, MINER N. KNOWLTON, LYMAN Baird, Trustee; Michael Andrew Rorke, Charles J. Shields, William Lindsley, Sarah L. Robb, Ransome A. Givens, and Alonzo G. Collins. } In Chancery.

Be it remembered that on the fifteenth day of February, 1883, came the complainant, by her solicitor, and filed in the office of the clerk of the circuit court of the United States for the
2 northern district of Illinois, at Chicago, in said district, her bond for costs and bill of complaint in said entitled cause; which said bond and bill are, respectively, in the words and figures following, to wit:

3 *Bond.*

UNITED STATES OF AMERICA, } *ss:*
Northern District of Illinois, }

Circuit Court. December Term, A. D. 1883. In Chancery.

EMILY HOYT
vs.
ANNA HANBURY, MINER N. KNOWLTON, and LYMAN BAIRD, Trustee.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and, in default of payment by the complainant of any costs ordered or adjudged to be paid by her, hereby agree and stipulate that execution may issue against my property for any costs taxed against her.

Dated this 15th day of February, A. D. 1883.

EDWARD J. HILL.

Endorsed: Filed Feb. 15th, A. D. 1883. W. H. Bradley, clerk.

4 To the judges of the circuit court of the United States for the northern district of Illinois:

Emily Hoyt, of Stamford, and a citizen of the State of Connecticut, brings this her bill against Anna Hanbury, Miner N. Knowl-

ton, and Lyman Baird, trustee, all of them of the city of Chicago and citizens of the State of Illinois.

And thereupon your orator complains and says—

That she is now, and since about the first day of April, A. D. 1877, has been, the owner of buildings and lessee of the lot- upon which the same are erected, known as Nos. 392 and 394 South Clark street, in the city of Chicago and county of Cook, in said district.

That on the 24th day of July, A. D. 1878, the complainant, by letter of attorney, under her hand and seal, duly acknowledged and recorded in the recorder's office in said Cook county, in Book
5 794 of Records, on page 605, made and constituted one Miner N. Knowlton her attorney-in-fact to manage and control her said and other property in the county of Cook aforesaid, as therein described, as will more fully and at large appear on reference to the copy of said letter of attorney, hereto annexed and marked "Exhibit A" and hereby made a part of this her bill of complaint.

That the rents of said property Nos. 392 and 394 South Clark street have aggregated the sum of ($150) one hundred and fifty dollars per month ever since the same have been entrusted to the said Miner N. Knowlton, and that under and by virtue of said letter of attorney the same Miner N. Knowlton has received and collected all said rents or, in the aggregate, the sum of upward of six thousand dollars ($6,000).

That the said Miner N. Knowlton has hitherto failed and neglected to account to and with the complainant for said moneys, but with the same has purchased in his own name the following-described real estate, situate in the city of Chicago and county
6 of Cook aforesaid—that is to say:

Lots numbered one (1) and two (2) of McKee's subdivision of lots fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56), in Taylor's subdivision of block forty-three (43), in the canal trustees' subdivision of the west half and the west half of the northeast quarter of section seventeen (17), in township thirty-nine (39) north, of range fourteen (14) east, of the third P. M.; also lot 57, in Taylor's subdivision of said block forty-three (43).

And that also, with said moneys of the complainant, the said Miner N. Knowlton has caused to be erected on said lot fifty-seven (57) a large three-story brick dwelling-house and barn.

That in the summer of 1881, and after the purchase of said real estate by the said Miner N. Knowlton as aforesaid, he, the said Miner N. Knowlton, purchased, for and on account of the complainant, with her moneys thus received by him as aforesaid for an investment thereof, a certain note, of date June 25, 1877, for the
7 sum of $1,800.00, made by Blanche D. McKee and William H. McKee, payable five years after date thereof, with interest at nine per cent. per annum, and the trust deed securing the same, given by said Blanche D. McKee and William H. McKee, conveying to one Lyman Baird, as trustee therein named and upon the trust therein described, the following-described lands, to wit:

Beginning at a point in the east line of Mufkerry street 20 feet south of the N. W. corner lot 56, in H. M. Taylor's subdivision of

block forty-three (43), canal trustees' subdivision of west half and west half of northeast one-quarter, section seventeen (17), township thirty-nine (39), range fourteen (14) east, of third P. M.; thence running south on east line of Mufkerry street 20 feet; thence, parallel to the north line of said lot 56, 125.4 feet, more or less, to an alley; thence north on west line of said alley 20 feet; thence west, parallel to the north line of said lot 56, 125.4 feet, more or less, to place of beginning. North and south lines coincide with lines running in the middle of partition walls separating house erected.

8 That the lands upon which said trust deed is predicated are a portion of the lands theretofore purchased by the said Miner N. Knowlton with the moneys of the complainant, as hereinbefore stated and set forth.

That subsequently the said Miner N. Knowlton turned over to the complainant the said note and trust deed, and informed the complainant that no interest had been paid thereon since the 25th day of June, A. D. 1881.

That shortly after receiving said trust deed the complainant applied to the said Lyman Baird, trustee, to sell said real estate, not then knowing that the said Knowlton had also purchased the remainder or equity of redemption of the lands described therein, as aforesaid.

That on the ninth day of January last past the said Lyman Baird, trustee, computed the interest on said note and found that there was then due and unpaid, of principal and interest on said note,

9 the sum of two thousand one hundred and sixty-six dollars and eighty-one cents ($2,166.81); whereupon, pursuant to said application, the said Lyman Baird caused notice of sale of the lands described in said trust deed, pursuant to the power of sale therein contained, to be published.

That the complainant has called upon the said Miner N. Knowlton to account to and with her for the said rents and moneys so collected by him as aforesaid, and that he has failed and neglected so to do.

That the complainant has recently learned, and upon her information and belief alleges the facts to be, that in June last past the said Miner N. Knowlton made the acquaintance of one Anna Hanbury and afterward entered into an agreement in words and figures following—that is to say:

Articles of agreement entered into this eighth (8) day of September, 1882, between Miner Nathaniel Knowlton, of the city of

10 Chicago, in the county of Cook and State of Illinois, of the first part, and Anna Hanbury, of the second part, witnesseth:

That the said Miner Nathaniel Knowlton, by these presents, agrees to convey and grant by warranty deed unto said Anna Hanbury, her heirs and assigns, lots numbered one (1) and two (2) of McKee's subdivision of lots fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56), in Taylor's subdivision of block forty-three (43), in the canal trustees' subdivision of the west half and the west half of the northeast quarter of section seventeen (17), in township thirty-nine

(39) north, range fourteen (14) east, of the 3rd P. M., in Chicago, Cook county, Illinois; also lot (57) fifty-seven, in Taylor's subdivision of said block forty-three (43), with all the buildings and improvements thereon, except an encumbrance of eighteen hundred dollars on part of said premises, known as number 22 Winthrop Place, Chicago, with the appurtenances, and free from all other encumbrances and liens, excepting that of taxes for the year 1883 (three), for and in exchange of and for the following-described lands and tenements, with the appurtenances, of the said Anna
11 Hanbury, known and described as follows, to wit:

A certain parcel of land situated in that part of Boston, in the county of Suffolk and Commonwealth aforesaid, called "Clarendon Hills," being lots numbered one (1), eight (8), nine (9), twelve (12), thirteen (13), twenty-three (23), twenty-four (24), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-five (35), thirty-nine (39), forty (40), forty-one (41), forty-five (45), forty-seven (47), fifty-five (55), fifty-six (56), fifty-eight (58), sixty (60), sixty-three (63), sixty-nine (69), seventy-three (73), seventy-seven (77), seventy-eight (78), seventy-nine (79), and eighty (80), on a plan of land of C. J. Page and J. H. Page at "Clarendon Hills," drawn by E. W. Hencke and dated May 22nd, 1872, and recorded in Norfolk registry of deeds, containing, to wit, in or about one hundred and ninety-nine thousand four hundred and sixty-one (199,461) square feet of land, being a portion of the premises to Harvey A. Whiting and George O. Whiting by deed from Charles J. Page and J. H. Page conveyed, date- May 5th, 1873, and recorded with Norfolk county deeds, Lib. 440, folio 268; to have and to hold said last-described premises
12 to said Miner Nathaniel Knowlton in fee, but subject, nevertheless, to an incumbrance of one thousand dollars, which includes a mortgage of eight hundred dollars and interest and two hundred dollars agreed upon as a lien upon said premises, though not acknowledged or recorded.

It is further agreed that said Knowlton shall furnish an abstract of title to said premises, duly certified to by Handy & Co., Haddock, Vallette & Records, or the recorder of Cook county, Illinois, for examination and for the opinion of said Anna Hanbury's counsel, and that the said Anna Hanbury shall furnish to the said Miner Nathaniel Knowlton an abstract, according to the custom of Boston, Massachusetts, of the title to the said above-described premises, situated in Suffolk county, Massachusetts.

It is agreed further that said Miner Nathaniel Knowlton may use the north wall of the building erected on the north line of said lot No. fifty-seven (57), in Taylor's subdivision of block 43, C. T. subdivision of W. $\frac{1}{2}$ & W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, section 17, T. 39, R. 14
13 E., of 3rd P. M., as a party wall whenever he desires so to do.

And it is lastly agreed that said Miner Nathaniel Knowlton shall deliver to said Anna Hanbury a certain set of diamonds, free of charge, as a condition precedent to the exchange of a deed of conveyance of her real estate above described by her to said

Knowlton, which diamonds have been deposited heretofore by her with him as a security for a loan of money.

(Signed) MINER N. KNOWLTON. [s.]
(Signed) ANNA HANBURY. [s.]

STATE OF ILLINOIS, *County of Cook:*

I, Andrew M. Rorke, a notary public in and for said county of Cook, in the State aforesaid, do hereby certify that Miner N. Knowlton and Anna Hanbury, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that *he* signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and wa-ver of the right of homestead.

Given under my hand and notarial seal this eighth (8) day of September, A. D. 1882 (eighty-two).

[L. S. OF NOTARY PUBLIC.] ANDREW M. RORKE,
Notary Public in and for said County, in said State.

14 That said Miner N. Knowlton in making the purchase of said property with the moneys of the complainant as aforesaid in his own name, without the knowledge or consent of the complainant, became and was and is the trustee of the complainant by virtue of the trust resulting therefrom in the law, and that said agreement was made in violation of the said trust.

That in attempting to carry out said agreement said Miner N. Knowlton and the said Anna Hanbury have fallen into disputes and engaged in expensive litigation over the property of the complainant aforesaid, so that she is greatly in danger of losing the same.

That the said Anna Hanbury, through false and fraudulent representations and undue influence over the said Miner N. Knowlton, procured the said written agreement from him, and has procured from him warranty deeds conveying said property to her, and procured from him the possession thereof, and is now collecting
15 the rents therefor from tenants in possession thereof to the amount of $110 per month.

That the said Anna Hanbury, after making the acquaintance of the said Miner N. Knowlton, in June last, held out and represented to him that she had a few years before that time, at Boston, Massachusetts, where she formerly resided, inherited a considerable fortuue of upwards of one hundred thousand dollars, and that in course of time the same had been spent, excepting about the sum of twenty thousand dollars, and that under the advice of friends and careful counsel to preserve the residue of said inheritance the said twenty thousand dollars, then being all in cash, had been invested in twenty-seven unimproved lots in said city of Boston.

That all said representations were false and untrue, as the said Anna Hanbury then and there well knew and understood, but that she, the said Miner N. Knowlton, trusting and confiding in her, be-

lieved the same and fully relied thereon, and was thereby
16 induced to enter into said agreement and make said transfer of property.

That to further induce the said Miner N. Knowlton to enter into said agreement and to carry out the same she, the said Anna Hanbury, did also state and represent to the said Miner N. Knowlton that the said twenty-seven lots were situate on a public street, and were located within one block of the depot or station-house at Clarendon Hills, a new part of the city of Boston, Massachusetts, on the Boston and Providence railroad, which statement and representations she, the said Anna Hanbury, well knew to be false and untrue.

But he, the said Miner N. Knowlton, fully believed the same, and without visiting the property or taking any steps to otherwise learn of their location, entered into said agreement, and proceeded to carry out the same, until he afterward learned that said lots of land were located upward of half a mile from said depot or station-house, as the fact is.

17 And your oratrix further shows, and upon her information and belief alleges the fact to be, that to further influence and persuade the said Miner N. Knowlton to enter into such agreement she, the said Anna Hanbury, produced certain title deeds to said twenty-seven lots at Clarendon Hills aforesaid, and pointed to the consideration therein stated, showing that the same had been transferred and sold, and that she had paid therefor the sum of nearly twenty thousand dollars ($20,000), and that she, the said Anna Hanbury, well knew and understood that said consideration was never paid and the statements thereof in said title deeds were false and untrue; but he, the said Miner N. Knowlton, not knowing the contrary, believed the same, and relied thereon in making said agreement and in carrying out the same.

That in view of the facts hereinbefore set forth the said Anna Hanbury is not an innocent purchaser *bona fide* for value,
18 but now holds the title to said lands in the city of Chicago subject to the said trust and the equities of the complainant.

That said Anna Hanbury is a poor person and unable to respond for or to account for the rents which she is receiving as aforesaid, and aside from said property has no other property, either real or personal.

And your orator further shows that the said Miner N. Knowlton is insolvent and unable to respond, in damages or otherwise, for the said moneys, having no property, either real or personal, not by law exempt from execution.

That the property of your orator is worth in cash about the sum of $10,000.

That the property on which said trust deed is predicated is worth about the sum of $2,000, and would not bring at forced sale the amount of the incumbrance thereon.

That the said property in Boston, the property of the said
19 Anna Hanbury, is encumbered for more than it will bring in cash, and that said incumbrances were thereon at the time of

making said agreement between the said Anna Hanbury and the said Miner N. Knowlton.

To the end, therefore, that your oratrix may have adequate relief in the premises in a court of equity, where matters of this sort are alone cognizable and relievable, may it please your honors to grant unto her, the said Emily Hoyt, complainant, the writ of injunction to restrain the said Anna Hanbury, defendant, and the said Miner N. Knowlton, the other defendants, their agents, attorneys, & solicitors, from further interfering with the following-described property, to wit:

Lots numbered one (1) and two (2) of McKee's subdivision of lots fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56), in Taylor's subdivision of block forty-three (43), in the canal trustees' subdivision of the west half and the west half of the northeast quarter of section seventeen (17), in township thirty-nine (39) north,
20 of range fourteen (14) east, of the 3rd P. M.

Also lot fifty-seven (57), in Taylor's subdivision of block forty-three (43) of said other subdivision.

And that a receiver be appointed to collect the rents and take charge and care of said property, and that said Lyman Baird, trustee, defendant, be enjoined from proceeding with said sale until the further order of court, and that, the premises being seen, the said written agreement and all conveyances made pursuant thereto touching said property between the said Anna Hanbury and the said Miner N. Knowlton may be decreed to be annulled, cancelled, rescinded, and set aside, and that the said Miner N. Knowlton be decreed to account to and with the said complainant for all moneys received by him as such attorney-in-fact, and that the said property, or so much thereof as the said Miner N. Knowlton has purchased with the moneys of the complainant, be decreed to belong to the complainant, and that the said Anna Hanbury be required
21 to convey the same to the complainant, or in default of her so doing the same be transferred by a special master or a master of this court, and for such other or further order or decree as may be necessary and proper in the premises to enforce the trust hereinbefore described and as may be according to equity and good conscience.

And may it please your honors to grant unto the complainant the usual writ of summons, commanding the said Anna Hanbury, defendant, the said Miner N. Knowlton, defendant, and the said Lyman Baird, trustee, defendant, to appear and answer this bill of complaint by a certain day therein named, and that each of them except the said Lyman Baird be required to answer the said bill of complaint, though not on oath, the necessity of answering under oath being hereby expressly waived.

And your oratrix will ever pray, &c.

EMILY HOYT,
By EDWARD J. HILL,
Her Solicitor.

E. J. HILL, *Of Counsel.*

22 EXHIBIT A.

Know all men by these presents that I, Emily Hoyt, of the town of Stamford, county of Fairfield and State of Connecticut, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Miner N. Knowlton, of Chicago, Cook county, Illinois, my true and lawful attorney, for me and in my name, place, and stead to take charge of my leasehold property situated on lot 4, block 111, school section addition to Chicago, Illinois, and to make new ground lease with owner of ground, as above stated; to make leases for one year; to collect rents now due or which may become due, and to sue and distrain for the same; to pay insurance premiums, water tax, ground rent, and to collect insurance in case of loss by fire; the leases to be made from year to year and the rents to be payable monthly; also to take charge of any other property which I may have or acquire in Cook county, Illinois. My said attorney is to make such necessary repairs on buildings as may be required to keep — in order, giving and granting unto M. N. Knowlton, said attorney, full power and authority to do and
23 perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal the 24th day of July, one thousand eight hundred and seventy-eight.

(Signed) EMILY HOYT. [s.]

Signed, sealed, and delivered in presence of—
TH. FERRIS WATERBURY.
CHARLES E. HOLLY.

STATE OF CONNECTICUT, }
Town of Stamford, Fairfield County, } ss.:

On the 24th day of July, eighteen hundred and seventy-eight, before me, a notary public of the county of Fairfield, in the State of Connecticut, appeared Emily Hoyt, personally known to me to be the real person whose name is subscribed to the foregoing power of attorney as having executed the same, and then acknowledged the execution thereof as her free act and deed.

Given under my hand and seal this 24th day of July, 1878.

[Notary Seal, C. E. Holly.]

(Signed) CHARLES E. HOLLY,
Notary Public for Connecticut.

Filed Feb. 15, 1883.

WM. H. BRADLEY, *Clerk.*

24 On the same day, to wit, on the fifteenth day of February, 1883, there issued out of said clerk's office a writ of subpœna

in said entitled cause; which said writ, together with the return of the marshal thereto attached, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to Anna Hanbury, Miner N. Knowlton, and Lyman Baird, trustee, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of April next, to answer the bill of complaint of Emily Hoyt, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the
25 Supreme Court of the United States of America, at Chicago aforesaid, this 15th day of February, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the 107th.

[SEAL.] W. H. BRADLEY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

W. H. BRADLEY, *Clerk.*

Special Deputy's Return.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Know all men by these presents that I have appointed, and by these presents do appoint, T. F. Robinson my true and lawful deputy to execute the annexed writ, Emily Hoyt *vs.* Anna Hanbury, and to make return of the execution according to law.

A. M. JONES, [SEAL.]
U. S. Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit:
By reading the same to and in the presence and hearing of
26 Anna Hanbury and Miner N. Knowlton, and delivering each of them a true copy thereof in person, this 15th day of February, A. D. 1883.

Lyman Baird not served, by order of plaintiff's att'y.

A. M. JONES,
United States Marshal,
By T. F. ROBINSON,
Special Deputy.

UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

T. F. Robinson, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him, in addition to the fees, was actually incurred, and that the same is according to law.

T. F. ROBINSON.

Subscribed and sworn to before me this 15th day of February, A. D. 1883.

[SEAL.] SAMUEL C. HAYES,
Notary Public.

Endorsed: Filed Feb. 24, 1883. W. H. Bradley, clerk.

Afterwards, to wit, on the twentieth day of February, 1883, came Miner N. Knowlton, by his solicitor, and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

27 Circuit Court of the United States, Northern District of Illinois, *ss.* In Chancery.

EMILY HOYT
vs.
MINER N. KNOWLTON, Impleaded with ANNA HANBURG and LYMAN BAIRD, Trustee.

The separate answer of Miner N. Knowlton, impleaded with Lyman Baird, trustee, and Anna Hanburg, defendants, to the bill of complaint of Emily Hoyt, complainant.

This defendant, saving and reserving to himself all benefits and advantages of exception or otherwise to the said bill of complaint, for answer to the said bill, or so much thereof as this defendant is advised is material or necessary for him to make answer unto, answers and says—

That this defendant admits that he was appointed the attorney-in-fact for the complainant and has collected rents for her for her property here in the city of Chicago substantially as is set forth and alleged in said bill of complaint.

But this defendant denies that he has failed or neglected to account to and with the complainant therefor, as alleged in said bill of complaint.

This defendant further admits that with the moneys of the complainant so received he has purchased the said real estate in part, but that the greater part of the purchase-money for said real estate

was furnished by this defendant by his own moneys derived by this defendant otherwise than from the property of the said Emily Hoyt.

28 This defendant further admits that he purchased solely and exclusively with the moneys of the said Emily Hoyt the note for $1,800.00 and the trust deed on said property, and that he has turned the same over to her, and that on the 9th day of January, A. D. 1883, there was due thereon the sum of two thousand one hundred and twenty-one dollars and eighty-one cents, as alleged in said bill of complaint, for which he should have credit and for which he has fully accounted.

This defendant further admits that, with the moneys of the said Emily Hoyt, in part with his own moneys and in part with his own time, skill, and labor, he improved a portion of said property by erecting thereon a large three-story dwelling-house and a barn.

But this defendant denies that the same became or was thereby the sole and exclusive property of the said Emily Hoyt.

This defendant admits that he did, as he had a right to do, take title to all said property in his own name substantially as stated in said bill of complaint.

This defendant admits that he entered into an agreement of the form, tenor, and effect as set forth in said bill of complaint with the defendant, Anna Hanburg, and that in carrying out said agreement this defendant and the said Anna Hanburg have fallen into dispute and have engaged in expensive litigation in the superior court of Cook county, and that transfers of property have been made between the said Anna Hanburg and this defendant substantially as alleged in said bill of complaint.

29 And this defendant admits that said Anna Hanburg procured the said agreement and the said transfer by the false and fraudulent representations by her made for that purpose, substantially as alleged and set forth in said bill of complaint, and he now claims that said agreement and said transfers are fraudulent and void as against this defendant.

And this defendant further says that he is ready and willing to account to and with the said complainant for all moneys received by him under said power of attorney as may be equitable in the premises and as to the court shall seem meet, as well as for the disposition thereof, and that this defendant denies all other matters and things stated and set forth in said bill not hereinbefore expressly admitted or denied, without this, etc.

MINER N. KNOWLTON.

B. M. MUNN,
Solicitor for Defendant Knowlton.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

Miner N. Knowlton, being duly sworn, deposes and says that he is the defendant who made the above answer and knows the contents thereof, and that they are true of his own knowledge.

MINER N. KNOWLTON.

Subscribed and sworn to before me this 20th day of February, A. D. 1883.

[SEAL.] H. S. STODDARD,
United States Commissioner.

Endorsed: Filed February 20th, 1883. William H. Bradley, clerk.

30 Afterwards, to wit, on the twenty-third day of February, 1883, in the December term of said court, 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY, MINER N. KNOWLTON, and LYMAN BAIRD, Trustee. } In Chancery.

This cause coming on to be heard upon the bill of complaint and the answer of Miner N. Knowlton, and it appearing unto the court now here that the said Miner N. Knowlton is now and has been the agent and attorney-in-fact of the said complainant, as charged and alleged in said bill and admitted in said answer, and it also in the same manner appearing to the court that the said Miner N. Knowlton has received as such agent and attorney-in-fact large sums of money which belonged to said complainant, for which he has not fully accounted, and that he has invested the same in certain real property and in making improvements thereon in his own name in the city of Chicago, in said district, contrary to his duty as such attorney-in-fact: Now, therefore, it is hereby adjudged and decreed that said Miner N. Knowlton do make full, true,
31 and perfect account of his doings as the agent and attorney-in-fact of the said complainant, and for that purpose reference of all matters touching said account, with the usual powers to send for persons and papers, is hereby made to Elijah B. Sherman, Esq., a master in chancery of this court, with directions to take and state said account between the said Emily Hoyt, complainant, and the said Miner N. Knowlton, one of the defendants named herein, and to inquire fully and particularly what disposition the said Miner N. Knowlton has made of the moneys which he has received belonging to the said Emily Hoyt, complainant, and to further inquire fully and particularly of the nature, situation, and value of any property, real and personal, which the said Miner N. Knowlton has purchased or improved with any of said moneys, and with all convenient speed due report of the facts make unto the court, with his conclusions thereon. Proceedings under this decree shall not affect defendants who have not yet answered.

32 Afterwards, to wit, on the twenty-sixth day of February, 1883, in the December term of said court, 1882, in the record

of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

On motion of complainant's solicitor, it is ordered that Elijah B. Sherman, Esq., be, and he is hereby, appointed special examiner herein to take evidence on behalf of the complainant under and in accordance with the sixty-seventh rule in equity, as amended.

33 Afterwards, to wit, on the tenth day of March, in the adjourned March term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

On motion of complainant, ordered that the complainant have leave to amend her bill of complaint herein without payment of costs, under the rule, and that on filing the said amendment with the petition to file, the same be, and hereby are, made a part of the said bill of complaint.

On the same day, to wit, on the tenth day of March, 1883, came the complainant, by her solicitor, and filed in said clerk's office her petition and amended bill in said entitled cause; which said petition and amended bill are in the words and figures following, to wit:

34 *The Petition of Emily Hoyt for Leave to Amend her Bill of Complaint in the Above-Entitled Cause.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

In the Circuit Court of the United States.

EMILY HOYT
vs.
MINER N. KNOWLTON, ANNA HANBURY, and LYMAN BAIRD.

To the hon. the judges of said court:

The petitioner represents and shows unto you honors that since the filing of her bill of complaint the facts set forth in the proposed amendments hereto annexed have come to the knowledge of her solicitor, and that they are material and necessary, and that it is necessary to make new parties defendant to said bill of complaint.

Wherefore she asks leave to amend her said bill of complaint as specified in the amendments hereto annexed.

EMILY HOYT,
By EDWARD J. HILL,
Her Solicitor.

35 And now comes the said complainant, by Edward J. Hill, her solicitor, and, by leave of court first had and obtained, amends her bill of complaint herein as follows, to wit:

First. By adding immediately before the words "To the end, therefore," etc., where they occur in said bill, the following, viz:

And the complainant further says that on the 14th day of February, A. D. 1883, by a certain deed of trust, on that day placed of record in the recorder's office in Cook county aforesaid, in Book 1278, on page 64, the said defendant, Anna Hanbury, transferred and conveyed to her senior solicitor, the trustee therein named, to wit, Michael Andrew Rorke, the said premises, otherwise known and usually designated as numbers 18, 20, and 22 Winthrop Place, to secure the certain promissory note therein described, payable to her own order, for the sum of thirty-two hundred dollars ($3,200).

That the said Michael Andrew Rorke has been counsel and solicitor for said Anna Hanbury during and throughout all the transac-
36 tions between her and the defendant, Miner N. Knowlton, and at the time of making of said conveyance or trust deed he, the said Michael Andrew Rorke, had full, perfect, ample, and complete notice of the false and fraudulent representations and of the misrepresentation through and by means of which the said Anna Hanbury acquired title to said property so conveyed to him in trust, as alleged and charged against her in her dealings with the defendant, Miner N. Knowlton, hereinbefore and as in this bill of complaint set forth.

And the complainant further says that the said Anna Hanbury and the said Michael Andrew Rorke have together negotiated the said promissory note secured by said trust deed with some persons or person, corporation or corporations, to the complainant unknown, whom, when discovered, the complainant will ask leave, if necessary, to make party or parties defendant to this her bill of complaint.

And the complainant further says that by virtue of the pendency of the said suits then and still depending in the superior court
37 of Cook county between the said Anna Hanbury and the said Knowlton, on her part to reform the agreement between them and to specifically enforce the same, and on his part to rescind the same and all conveyances thereunder made, the said purchaser or purchasers of said promissory note, as well as by the notice aforesaid to the trustee named in said trust deed securing the same, became the owner or owners thereof with full knowledge of the false and fraudulent representations of the said Anna Hanbury aforesaid.

And the complainant further says that the defendant, Charles J. Shields, is the tenant and in possession of the premises known as No. 22 Winthrop Place.

That the defendant, William Lindsley, is the tenant and in possession of the premises known as No. 20 Winthrop Place.

That the defendant, Sarah L. Robb, is the tenant and in possession of the premises known as the first floor of No. 18 Winthrop Place.

38 That the defendant, Ransome A. Givens, is the tenant and in possession of the premises known as the second or upper floor of No. 18 Winthrop Place.

That the defendant, Alonzo G. Collins, is the tenant and in possession of the premises known as the basement of No. 18 Winthrop Place.

And that said Michael Andrew Rorke and said tenants, all of them, are citizens of the State of Illinois.

And complainant further says that the said Anna Hanbury has collected rents of said tenants for said premises, respectively aforesaid, in the aggregate to the sum of $110 per month, since October 1, A. D. 1882, viz:

For the month of October, 1882	$110 00
For the month of December, 1882	110 00
For the month of January, 1883	110 00
For the month of February, 1883	110 00
And for the month of March, 1883	110 00
Or the full sum of	$550 00

Which, by reason of the premises, are properly and equitably the property of the complainant.

39 And the complainant further says that the said Anna Hanbury is wholly insolvent and pecuniarily irresponsible, and that she has no property, either real or personal, within the jurisdiction of this court not by law exempt from execution.

And that there will accrue and grow due from said tenants each and every month ensuing, the rents for said premises, the sum of $110 per month, which, if suffered to go into the hands of the said Anna Hanbury, will be lost to the complainant.

Second. And by adding to the prayer of said bill, just preceding the words "and for such other and further relief," &c., where they occur in said bill of complaint, the following, viz:

And that the defendant, Anna Hanbury, be required to account for and pay over to the complainant all the rents, issues, and profits received by her from the said premises, numbers 18, 20, and 22 Winthrop Place, or any part or portion thereof, and that the de-

40 fendants, Anna Hanbury, Michael Andrew Rorke, and the owner of said promissory note and trust deed, of date February 14, 1883, when discovered, be required to bring the same into court, and that the same be cancelled; and that the defendants, Charles J. Shields, William Lindsley, Sarah L. Robb, Ransome A. Givens, and Alonzo G. Collins, respectively, be required to pay over all rents unpaid and all rents to your — due aforesaid, to a receiver, and be enjoined and restrained from further paying any moneys

for the use and occupation or rent of said premises or any part thereof to the defendant, Anna Hanbury.

And that process of subpœna issue to the said defendants, Michael Andrew Rorke, Charles J. Shields, William Lindsley, Sarah L. Robb, Ransome A. Givens, and Alonzo G. Collins, commanding them to appear and answer this bill of complaint as amended, though not on oath, answer under oath being hereby expressly waived.

41 UNITED STATES OF AMERICA, *Northern District of Illinois*, } *ss:*

Edward J. Hill, being duly sworn, deposes and says that he is the solicitor for the complainant in the above-entitled cause; that he has prepared the foregoing amendments and the petition as such solicitor from the facts which have come to his knowledge since the filing of original bill in said cause, and that said bill of complaint and all the facts set forth in said petition and amendments are true of his own knowledge, information, and belief.

EDWARD J. HILL.

Subscribed and sworn to this 10th day of March, A. D. 1883, before me—

H. I. HOLLAND.

Endorsed: Filed Mar. 10, 1883. Wm. H. Bradley, clerk.

42 Afterwards, to wit, on the twenty-sixth day of March, in the adjourned March term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT *vs.* ANNA HANBURY *et al.* } In Chancery.

Now come the parties, by their solicitors, and on motion of the defendants, by Mr. Rorke, the complainant is ruled to file a good bond for costs herein within ten days.

43 Afterwards, to wit, on the thirty-first day of March, 1883, came M. A. Rorke, trustee, and Anna Hanbury, by their solicitors, and filed in said clerk's office their appearances in said entitled cause; which said appearances are in the words and figures following, to wit:

Appearance.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States. In Chancery.

EMILY HOYT, Complainant,

vs.

MINER N. KNOWLTON, ANNA HANBURY, LYMAN BAIRD, MICHAEL Andrew Rorke, Trustee; Charles J. Shields, William Lindsley, Sarah L. Robb, Ransome A. Givens, and Alonzo G. Collins, Defendants.

I hereby enter the appearance of the defendant, Michael Andrew Rorke, trustee, and my own appearance as his solicitor and attorney of record in the above-entitled cause.

ANDREW M. RORKE,
Att'y & Solicitor of Record for the said Defendant, Michael Andrew Rorke, Trustee.

Endorsed: Filed Mar. 31, 1883. Wm. H. Bradley, clerk.

44 *Appearance of Hanbury.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States. In Chancery.

EMILY HOYT, Complainant,

vs.

MINER N. KNOWLTON, ANNA HANBURY, LYMAN BAIRD, MICHAEL Andrew Rorke, Trustee; Charles J. Shields, William Lindsley, Sarah L. Robb, Ransome A. Givens, and Alonzo G. Collins, Defendants.

We hereby enter the appearance of the defendant in the above-entitled cause known and designated as Anna Hanbury, and we also enter our appearance as her attorneys and solicitors of record.

M. A. RORKE & SON,
Solicitors & Att'ys for said Defendant, Anna Hanbury.

Endorsed: Filed Mar. 31, 1883. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 13th day of April, 1883, came A. G. Collins and filed in said clerk's office his answer in said entitled cause; which said answer is in the words and figures following, to wit:

45 Circuit Court of the United States, Northern District of Illinois, *ss.* In Chancery.

EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON, ANNA HANBURG, LYMAN BAIRD, Trustee; MICHAEL ANDREW RORKE, ALONZO G. COLLINS, *et al.*

And now comes Alonzo G. Collins, in his own proper person, and, for answer to the bill of complaint on this cause as amended, admits that he is tenant and in possession of the basement of the messuage or tenement known as No. 18 Winthrop Place, in the city of Chicago; that he rented the same of the defendant, Miner N. Knowlton, on a verbal lease from month to month, commencing on the 18th of each month, payable in advance, for the rent of $18.00 per month, and that, before he had notice of the filing of the bill of complaint as amended aforesaid, all rents due from this defendant had been by him paid up to the 18th day of March, A. D. 1883, and this defendant now herewith pays into court the sum of eighteen dollars for the rent due on said premises up to the 18th day of April, A. D. 1883.

And as to all other matters in said bill contained this defendant has no knowledge, and leaves the complainant to her proof, without this, etc.

ALONZO G. COLLINS.

Endorsed: Filed April 13th, 1883. William H. Bradley, clerk.

46 Afterwards, to wit, on the eighteenth day of April, 1883, came Lyman Baird, trustee, by his solicitor, and filed in said clerk's office his answer to the bill and amended bill in said entitled cause; which said answer is in the words and figures following, to wit:

47 Circuit Court of the United States, Northern District of Illinois, *ss.* In Chancery.

EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON, ANNA HANBURG, MICHAEL ANDREW RORKE, LYMAN BAIRD, Trustee, *et al.*

The separate answer of Lyman Baird, trustee, defendant, to the said bill of complaint and amended bill of complaint of Emily Hoyt, complainant.

And now comes the defendant, Lyman Baird, in his own proper person, and says that he is the trustee named in that certain trust deed of record in the recorder's office, in Cook county, recorded in Book 717 of Records, page 171, as document No. 141,447; that the same, together with the principal note of $1,800.00 and three coupon interest notes for $81.00 each thereto attached, were sent to him by Emily Hoyt, of Stamford, Connecticut, with directions to foreclose the same, in the month of January last past.

And this defendant admits that he is the holder of the legal title to the premises described in said trust deed upon the trusts therein mentioned, and that, as to all other matters and things stated in said bill of complaint and amended bill of complaint, this defendant has not sufficient knowledge to either admit or deny the same, but leaves the complainant to her proofs.

48 And this defendant submits himself, as such trustee, to the order, decree, or direction of the court herein, and prays to be hence dismissed with his costs, etc.

LYMAN BAIRD, *Trustee.*

Endorsed: Filed April 18th, 1883. William H. Bradley, clerk.

Afterwards, to wit, on the seventeenth day of May, 1883, came E. B. Sherman, one of the masters in chancery of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

49 *Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EMILY HOYT, Complainant,
vs.
ANNA HANBURY, MINER N. KNOWLTON, and LYMAN BAIRD, Trustee, Defendants.

To the judges of said court:

The undersigned, master in chancery of said court, to whom was referred the above-entitled cause by an order entered therein on the 23rd day of February, A. D. 1883, directing him as such master to take and state an account between the said complainant and the said defendant, Miner N. Knowlton, and to enquire fully and particularly what disposition the said Miner N. Knowlton has made of the moneys which he has received belonging to said complainant, and to enquire further fully and particularly of the nature,

50 situation, and value of any property, real or personal, which the said Miner N. Knowlton has purchased or improved with any of said moneys, and to make report of the facts to the court, with his conclusions thereon, respectfully reports—

That said cause was set down for hearing before said master, for the purposes in said order specified, on the 24th day of February, A. D. 1883, at 10 o'clock a. m.; that there appeared at such hearing Edward J. Hill, Esq., solicitor for said complainant; B. M. Munn, Esq., solicitor for said defendant, Miner N. Knowlton, and M. A. Rorke & Son, solicitors for said defendant, Anna Hanbury, who entered a special appearance for that purpose, reference to which, as noted in the evidence taken in said cause, is hereby made; that the said defendant, Miner N. Knowlton, was then sworn and examined in chief by said Edward J. Hill, Esq., and cross-examined by said B. M. Munn, Esq.; that said examination was adjourned from

time to time until the same was concluded; that said witness
51 produced in evidence an account of moneys belonging to said complainant received and paid out by him; that he further produced in evidence deeds, leases, policies of insurance, and other documents, which were marked and designated by the master as Exhibits A to R, inclusive, and which, with the testimony of said Miner N. Knowlton, are hereby made a part hereof and herewith returned into court; that from such evidence the master finds as follows:

That the complainant herein is a sister of said defendant, Miner N. Knowlton, and resides in the city of Stamford, State of Conn.; that on the 30th day of April, A. D. 1877, said complainant became the owner, by purchase, of certain property in the city of Chicago, taking title thereto by a master's deed from Henry Waller, Esq., master in chancery of the circuit court of Cook county, said property being described as follows:

All the buildings and other improvements situated on lot four (4), block one hundred and eleven (111), school section addition to Chicago, with all the appurtenances thereto.

52 That said property consisted of two two-story and basement frame buildings, known as numbers 392 and 394 South Clark St., Chicago, and a small wooden building between said two buildings, all said buildings standing on leased ground; that from the time of such purchase of said property said Knowlton became the agent of said complainant, and thenceforth, as such agent, executed leases of the said premises or portions thereof from time to time, collected the rents therefor, paid the ground rent thereof, procured and paid for insurance from time to time, and had entire supervision, control, and management of said premises; that between May 1, 1877, and February 1, 1883, said Miner N. Knowlton collected rents for the said Clark-street property amounting in the aggregate to $13,044; that he paid out during that time for ground rent, water taxes, insurance, and other necessary expenses $3,152.58; that as commission for making such collections and disbursements and for the care and management of the property said Knowlton has charged 10 per cent. upon the amount by him collected
53 or $1,304.40; that he paid for complainant for certain notes secured by a trust deed on certain property hereinafter more particularly set forth the sum of $1,800, leaving the net balance in his hands after disbursements, commission, and money paid out for said notes the sum of $6,787.04; that afterwards and some time about the 24th day of March, 1881, the said defendant Knowlton, with the moneys in his hands belonging to said complainant, purchased from Mary A. Shields and Charles J. Shields, her husband, certain real estate situate in the city of Chicago, county of Cook, and State of Illinois, described as follows:

Lot number 2 of McKee's division of lots 53, 54, 55, and 56, in Taylor's subdivision of block 43, in the canal trustees' subdivision of the west half of and west half of the northeast quarter of section seventeen, township 39 north, range fourteen east, of the third principal meridian, subject to an encumbrance of $1,800, and interest

from December 25, A. D. 1880, and taxes, said premises being
54 known as number 22 Winthrop Place, paying for said premises the sum of $700, subject to said encumbrance; that said Miner N. Knowlton caused a conveyance of said premises, by Mary A. Shields and Charles J. Shields, to be made to him, said Knowlton, such conveyance being a warrantee deed, bearing date and acknowledged on said 24th day of March, 1881, and recorded in the recorder's office of Cook county on the 25th day of March, 1881; that said defendant, Miner N. Knowlton, in the summer of 1880 also purchased with the moneys of said complainant then in his hands lot 57, in H. M. Taylor's subdivision of block 43, canal trustees' subdivision of the west half of the northeast quarter of section seventeen, township 39 north, range fourteen east, of the third P. M., in Cook county, Illinois, the same being then a vacant lot and hereinafter referred to as number 18 Winthrop Place, and paid therefor the sum of $600, taking the title therefor also in his own name; that said Knowlton also, in the fall of 1880, purchased with the said money of the said complainant in his hands the
55 premises known as number 20 Winthrop Place, subject to an encumbrance thereon, and paid therefor the sum of $450, beside paying for an outstanding trust deed secured by the said last-mentioned property the sum of about $1,850, and also took the title to the last-mentioned property in his own name and paid for said encumbrance out of moneys in his hands belonging to the said complainant; that, having taken the title to all this property in his own name and placing the deeds thereof of record in Cook county and having paid therefor and for the encumbrances and improvements thereon from the money of complaimant, the said Miner N. Knowlton assumed control and ownership of said property as if the same were his own; that he leased the said premises to sundry persons, who occupied the same as tenants, and collected the rents therefor; that he also made improvements on said premises known as 18 Winthrop Place by building thereon a large dwelling-house, having three floors of flats, and also a brick barn; that the material necessary to erect the said buildings
56 was purchased also with the moneys of the said complainant, although the said Miner N. Knowlton expended his own time and labor in and about the erection of the said buildings and improvements on the said property; that from the time of such purchase of the said Winthrop Place property up to the time when the same was conveyed to the defendant, Anna Hanbury, as hereinafter set forth, the said Miner N. Knowlton collected as rent for the said Winthrop Place property the sum of 679.55 dollars over and above his disbursements on account thereof for insurance, taxes, &c.: that afterwards and about the 8th day of September, 1882, the said defendant, Miner N. Knowlton, still holding the title to the said Winthrop Place property in his own name, and holding possession thereof through his tenants as aforesaid, and the said Anna Hanbury made and executed a certain agreement of that date wherein and whereby it was agreed, among other things, that the said Knowlton should convey by warranty deed to the said Anna Han-

bury all the said Winthrop Place property, subject to the en-
57 cumbrance of $1,800 on part of said premises known as 22,
and subject also to the taxes for the year 1882 on the whole of said property, and should receive in exchange therefor certain lands, described as follows:

A certain parcel of lands situated in that part of Boston, county of Suffolk, in the Commonwealth of Mass., called Clarenden Hills, being lots 1, 8, 9, 12, 13, 23, 24, 27, 28, 29, 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 78, 79, and 80 on a plat of lands of C. J. Paige and J. H. Paige, of Clarendon Hills, drawn by E. W. Houcke, and dated May 22d, 1872, and recorded in Norfolk registry of deeds, containing, to wit, about 199,461 square feet of lands, subject to an encumbrance of $1,000 in said agreement described.

That afterwards, on the 28th day of September, 1882, after the execution of the said agreement, the said Miner N. Knowlton, being then unmarried, executed, acknowledged, and delivered to the said Anna Hanbury two certain warranty deeds, in and by which he conveyed to her all the said premises known as the Winthrop
58 Place property, and which said deeds were recorded in the recorder's office of Cook county, Illinois, on the 28th day of September, 1882; and, in further execution of the said agreement, the said Anna Hanbury executed, acknowledged, and delivered to the said Miner N. Knowlton a warranty deed of the said premises hereinbefore described, situated in the said county of Suffolk and Commonwealth of Mass., the consideration of said deeds from Knowlton to Hanbury and from Hanbury to Knowlton being stated therein to be $21,000; that shortly after the execution of the said deeds the said Miner N. Knowlton turned over to the said Anna Hanbury the possession of the said Winthrop Place property, and that since that time the said Anna Hanbury has been in possession thereof through her tenants and has collected and received the rents of the same; that the rental of said Winthrop Place property is about the sum of $110 per month; that the value of the said Winthrop Place property is about $12,000; that said property conveyed by the said Anna Hanbury to the said Miner N.
59 Knowlton in Suffolk county, Mass., was not at the time of such conveyance and is not now of any value over and above the encumbrance thereon; that the said Miner N. Knowlton did not see and examine the said property conveyed to him by said Anna Hanbury until after the execution and delivery of the said deeds to him thereof, as aforesaid; that in October, 1882, the said Knowlton went to Boston, and then for the first time visited the said property — ascertained its location, its character, and its value; that in the latter part of October, 1882, the said Knowlton returned to Chicago and visited the said Hanbury and sought to obtain from her a rescission of the said contract and a reconveyance by the said parties of the property conveyed pursuant to the terms of said contract; that the said Anna Hanbury refused a re-exchange of the property and reconveyance, as the said Knowlton desired; and thereupon, upon the 3rd day of November, 1882, the said

Knowlton filed his bill in the superior court of Cook
60 county, wherein he set forth that the value of said Winthrop Place property was the sum of $12,000; that it was free and clear of encumbrance except the said $1,800; that the rental value thereof was $110 per month; that he was the owner of the said property and possessed thereof; that the said Anna Hanbury proposed to exchange therefor certain property in that part of Boston called Clarendon Hills, in the county of Suffolk and State of Mass., to wit, the property hereinbefore described; that the said Hanbury represented the said Clarendon Hills property to be worth the sum of $20,000 and to be encumbered by mortgage and liens $1,000, and that to induce the said Knowlton to exchange the said property on Winthrop Place for the said Clarendon Hills property and to pay her the sum of $500 in cash the said Anna Hanbury represented her Boston property to be worth in the Boston market $20,000, and that she actually paid therefor within the past two years the sum of $19,461 in cash; that in such purchase she had made a good investment, in view of its prospective value; that the
61 location thereof was popular; was in a suburb of Boston, and on and near the public streets leading direct to the depot and within one block of the said Clarendon Hills station; that the said Hanbury then and there assured the said Knowlton that she could obtain the written assurance of business and real estate men in Boston verifying her representations, and that to save the necessity of a visit to Boston to ascertain the truth thereof she desired him to confide in her statements so made. It is in said bill further set forth that the said Knowlton relied exclusively upon the said statements of the said Hanbury, and, having no knowledge of the said property and believing the said representations to be true, was thereby induced to accept the offer of the said Hanbury, believing that she would not intentionally deceive him and had not deceived him; that afterwards, on the 28th of September, 1882, the said Knowlton and Hanbury exchanged warranty deeds, and that the said Knowlton then and there paid the said Hanbury the sum of $500 and conveyed the said Winthrop Place property, subject to an incumbrance of $1,800; that the said Anna Hanbury conveyed
62 the said Clarendon Hills property to the said Knowlton, subject to an encumbrance of $1,000 thereon; and it was further set forth in the said bill that the said Knowlton had, since the exchange of said property, examined the same and ascertained its condition, location, and value, and that it was not worth as much by $15,000 as was represented by the said Hanbury, and that each of the material representation- of the said Hanbury regarding the said property were false and untrue, and were so by her known to be at the time they were made, and were intended to cheat and defraud the said Knowlton, and that he was thereby cheated and defrauded; and the said bill prays, among other things, that the said Hanbury might be restrained from disposing of the said Winthrop Place property; that a receiver might be appointed to receive and collect the rents for said property; that the said deeds might be set aside, and that the said Hanbury should be required to reconvey the

said property to her conveyed as aforesaid and refund the said
63 sum of $500 on receiving from the said Knowlton a deed for the said Clarendon Hills property.

That afterwards, to wit, on the 8th day of February, 1883, the said Anna Hanbury filed her bill in the said superior court of Cook county against the said Knowlton, Lyman Baird, and others, setting forth the articles of agreement made on the 8th day of September, 1882, for the exchange of the said property, as hereinbefore set forth; that in and by the said agreement the said Hanbury was to receive the said Winthrop Place property, together with all the buildings and improvements thereon, subject to an incumbrance of $1,800 on the said premises known as number 22 Winthrop Place and free from all other encumbrances and liens, except the taxes for the year 1881; that she was to convey to the said Knowlton the said Clarendon Hills property in exchange therefor; that on the 28th day of September, 1881, the said Hanbury and the said Knowlton met at the office of her attorneys, and that one of said attorneys then asked the said Knowlton who was the owner of the said $1,800 en-
64 cumbrance, and that the said Knowlton then and there answered that he controlled the same, and that all the interest thereon was paid up to October, 1882, and that the said Hanbury would pay the interest thereon from October 1st, 1882, and that he would collect and receive such interest from her and receipt for the same.

The said bill further set forth the execution, on the 28th day of September, 1882, by the respective parties, of deeds for the property as hereinbefore set forth; that on the 30th day of January, 1883, there was left at the residence of the said Anna Hanbury a copy of the Daily Inter-Ocean of January 11th, 1883, containing a notice of a trustee's sale, in and by which notice it appeared that Lyman Baird, as trustee, would sell, on the 13th day of February, 1883, the said premises number 22 Winthrop Place under and by virtue of the trust deed thereon, and that there was due upon the note secured by said trust deed the sum of $2,166.81; that the said last-named bill filed by the said Anna Hanbury, among other things, prayed to re-
form the deed made to her by the said Knowlton for the said
65 Winthrop Place property, and to specifically enforce the said agreement; that after the filing of the said last-named bill, to wit, about the 21st day of February, 1883, the said Anna Hanbury, by leave of court, paid therein the sum of $2,194.01, subject to the further order of the court in that cause.

And the said master further finds that since the exchange of property between the said defendant-, Anna Hanbury and Knowlton, the defendant Hanbury has placed an encumbrance of $3,200 upon the said Winthrop Place property.

That it appears by stipulation of counsel for said complainant Hoyt that she, up to within a short time before the filing of the bill herein, had no knowledge or information that the Winthrop Place property had been purchased from the moneys in the hands of said Knowlton belonging to her, nor that the same had been exchanged by said Knowlton for the said Clarendon Hills property as

aforesaid, and that the said Miner N. Knowlton did not, at or before the consummation of the said exchange of property, inform the said Anna Hanbury that the said complainant, Emily Hoyt, had
66 any interest, legal or equitable, *to* the said property.

And the master further finds, from the evidence taken on his own motion and supplemental to the evidence heretofore taken, that the said defendant, Miner N. Knowlton, collected, as rents of the said Winthrop Place property, after he had purchased the same as aforesaid, the sum of $1,085, before the said property was transferred to the possession of said Anna Hanbury; that he paid out for repairs, water taxes, general taxes, and charged for commissions for such collection, etc., the sum of $405.45, leaving the sum of $679.55 after paying such commissions, expenses, &c.; that in the construction of the building known as 18 Winthrop Place the said Miner N. Knowlton expended a large amount of time and labor, extending over about two years, and that he performed personally nearly all the labor required about the carpenter work of the said building, and that in the opinion of the said Knowlton his services in connection with the construction of said building were of the value of $1,500, but, inasmuch as the question as to whether he is
67 entitled to be allowed such compensation may depend upon the results of the entire litigation in this cause, the master makes no recommendation as to the said allowance, but recommends the same to be held in abeyance until the question as to whether the contract of exchange shall be rescinded and the Winthrop Place property decreed to belong to the complain-t herein is decided.

The master further finds that the said Miner N. Knowlton, from the moneys in his hands belonging to the said Emily Hoyt, made a loan to the said Anna Hanbury for the sum of $400, and secured the same by a pledge of certain diamonds now in her possession, and that said money was never repaid to the said Knowlton, but that, by the terms of the agreement regarding the exchange of the property, the said Knowlton agreed to pay the said Anna Hanbury, as part consideration for the purchase of the Clarendon Hills property, the said sum of $500 in cash, and to surrender to her
68 the diamonds held by him in pledge, and that such diamonds were so surrendered, pursuant to such agreement, as a condition precedent to the making of the deeds.

Respectfully submitted,

ELIJAH B. SHERMAN,
Master in Chancery of said Court.

Chicago, March 30th, 1883.

Endorsed: Filed May 17, 1883. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the eleventh day of June, 1883, came E. B. Sherman, one of the masters of said court, and filed in said clerk's office his report in said entitled cause; which said report is in the words and figures following, to wit:

69 *Master's Report on Executions to Answers and on Motion to Strike Out, &c.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, *et al.*, Defendants.

Master's report on exceptions of complainant to the answers of Anna Hanbury and Michael Andrew Rorke, and upon motion of complainant to strike from said answers certain exhibits thereto attached.

To the honorable judges of said court:

Pursuant to an order of this court made in the above-en-
70 titled cause on the — day of ——, 1883, the undersigned respectfully reports—

That as to the first exception filed by said complainant to the answer of Anna Hanbury it is doubtless true that a defendant pleading as new matter a conveyance to her of property must allege a consideration paid, and that a mere allegation that she was a *bona fide* purchaser for a valuable consideration would be sufficient, but in this case the complainant alleges the contract between defendant Knowlton and defendant Hanbury, wherein the consideration of the transfer is set forth, and further alleges that deeds were made pursuant to such contract, and insists that such contract was produced by fraud by the defendant Hanbury, and therefore seeks to have the same annulled.

The defendant Hanbury admits the taking of the deeds pursuant to the contract, but denies the fraud alleged in the bill. The consideration being fully set forth in the contract, the master is of the opinion that it was unnecessary for the defendant Hanbury
71 to restate the same in connection with her allegation that she was a *bona fide* purchaser for a valuable consideration, and for the same reason it was unnecessary for the defendant to allege the time of payment of the consideration.

As to the second exception, it was agreed by counsel that the same need not be passed upon by the master, counsel for defendant stipulating to supply originals in the place of the copies.

As to the third, fourth, and fifth exceptions, the master is of the opinion that they should severally be sustained, for the reason therein stated and set forth.

As to the exceptions of said complainant to the answer of the defendant, Michael Andrew Rorke, the master finds that the first exception thereto is well taken.

That the second exception, in manner and form as the same is taken, should not be sustained, because the said defendant Rorke is entitled, if he so elects, to answer the allegations of such bill
72 and to defend the said suit, not only as to the acts therein

charged to have done in whole or in part by him, but also as to all the material allegations of the said bill.

As to the third exception, whereby the exceptions to the answer of the defendant, Anna Hanbury, are renewed as to the answer of defendant Rorke, the master refers to his findings relative thereto.

In the matter of the motion of the complainant to strike certain papers from the files, it being the understanding of the master that he is to examine the questions raised by such motion and make such recommendation to the court as he deems proper in the premises, the master states that, as to the first, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh objections made by complainant to the several answers of the defendants, Anna Hanbury and Michael Andrew Rorke, he finds the motion should be sustained and the said papers therein named should be stricken from the files.

73 The master recommends that the motion of complainant be sustained in the particulars designated above, for the reason that the making of said documents mentioned in the above objections part of the answers of said defendants and exhibits thereto violates the rules and practice of chancery pleading in this court, which requires matters to be expressed in brief and succinct terms and to contain no unnecessary recitals of deeds, documents, contracts, or other instruments *in hæc verba*, or other impertinent or scandalous matter not relevant to the suit.

That as to the second and third objections made by complainant to said answers he finds that the motion should not be sustained, for the reason stated in connection with the first exception to the answer of the defendant Hanbury.

Respectfully submitted, E. B. SHERMAN,
Master, &c.

Endorsed: Filed the 11th day of June, 1883. Wm. H. Bradley, cl'k.

74 Afterwards, to wit, on the sixteenth day of June, 1883, came Michael A. Rorke and Anna Hanbury, by their solicitors, and filed in said clerk's office their exceptions to the report of the master in said entitled cause; which said exceptions are in the words and figures following, to wit:

75 *Exceptions to Master's Report.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EMILY HOYT, Complainant,

vs.

MINER N. KNOWLTON, ANNA HANBURY, *et als.*, Defendants.

Exceptions taken by the defendant, Michael Andrew Rorke, to the report made herein by Elijah B. Sherman, Esq., one of the masters in chancery of this court, on exceptions of complainant to the answers of Anna Hanbury and Michael Andrew Rorke and upon motion of complainant to strike from said answers certain exhibits thereto attached; which report bears date the 11th day of June, A. D. 1883.

First (1) exception. For that the said master in his report says that as to the exceptions of said complainant to the answer of
76 the defendant, Michael Andrew Rorke, he finds that the first exception thereto is well taken; which exception claims that this defendant has not alleged in his answer when and where the moneys paid for the proceeds of said note secured by trust deed from Hanbury to Rorke were paid over to the said Anna Hanbury or to her order, whereas the master should have reported that said first exception should be overruled, because the bill contained—

1st. No statement requiring such an answer thereto; and, again, because the answer 2d alleges that about $2,194.01, portion of the $3,200 loan, was paid by said Hanbury into the superior court of Cook — on the 21st February, 1883, to the credit of cause # 85764 (see said answer, page 44), and the exception is not warranted by the allegations of this defendant's said answer.

Second exception. For that the said master in his report says: As to the third exception, whereby the exceptions to the answer of the defendant, Anna Hanbury, are renewed as to the answer of the defendant Rorke, he refers to his findings relative thereto,
77 whereby he sustains the 3rd, 4th, & 5th exceptions to said Hanbury's answer, because the complainant in said exception thirdly taken says: "She excepts to the recitation in said answer of any and all matters which have occurred since the filing of the said bill of complaint, for the reason that the same are impertinent and unnecessarily cumbersome," whereas the said master should have overruled said exception as to the defendant Rorke, who had a right to allege and insist on in his answer all matters and things germane to his defence which might have transpired prior to the 10th March, 1883, the date of the amended bill filed in this court, the commencement of this suit, so far as he was & is concerned.

Third exception. As to the fourth exception made against the answer of the defendants Hanbury and Rorke, the master is of opinion that it should be sustained for the reason therein stated & set forth, wherein complainant excepts to all statements in the an-

swer tending to show that complainant is not the proper
78 party complainant, for the reason that the same is inconsistent with the defence attempted to be pleaded in said answer, to wit, a purchaser for value without notice, &c., of the equitable title of plaintiff in the premises, whereas the said master should have overruled said exception as to defendant Rorke, because this defendant submits that there is no rule of this court or law binding a defendant to one single line or point of defence against a complainant's claims, and that this defendant was and is entitled to insist not only that he is a purchaser *bona fide* for a valuable consideration without notice of the premises in the bill described, but also insist and charges that the alleged complainant and the defendant Knowlton had unlawfully conspired to defraud another defendant, Hanbury, of her property, and that the same subject-matter between said Knowlton, Hanbury, and Hoyt was in controversy in certain suits in a State court.

79 Fourth exception. As to the complainant's fifth (5) exception made to said Hanbury's answer and repeated as to said Rorke's answer, wherein said complainant excepts to all allegations tending to show that this court has not jurisdiction of the subject-matter as well as of the parties herein, for the reason that by answering to the merits herein defendant has waived said objections, the master was of opinion that said exception should be sustained for the reasons therein stated and set forth, whereas the said master should have overruled said exception, because the matters and things relied upon by complainant to sustain her said exception are alleged by the defendant Rorke in his answer for tbe purpose of giving to this honorable court a statement amounting to absolute verity of all the facts within the knowledge of said defendant Rorke and calculated to enlighten the chancellor's conscience in view of all the facts in controversy without any reservation.

ANDREW M. RORKE,
Solicitor for said Defendant.

80 In the matter of the motion of complainant to strike certain papers from the files the master finds that as to the 1st, 4th, 5th, 6th, 7th, 8th, 9th, 10th, & 11th objections made by complainant to the several answers of the defendants, Hanbury and Rorke, that the motion should be sustained and that said papers therein named should be stricken from the files; that the master recommends that the motion of complainant should be sustained in the particulars designated alone, for the reason that the making of said documents mentioned in the above objections part of the answer of said defendants and exhibits thereto violates the rule & practice of chancery pleading in this court, which requires matters to be expressed in brief and succinct terms and to contain no unnecessary recitals of deeds, documents, contracts, or other instruments "*in hæc verba*," or other impertinent or scandalous matter not relevant to the suit, whereas the master should have overruled said objections—

1st. Because the rule referred to, namely, rule 26, page 68,
81 Bradley's Rules, relates only to bills and not to answers.

2nd. Because the pleader for this defendant, in drafting his answer, advisedly referred to the XI exhibits in that behalf to obviate all unnecessary recitals of deeds, documents, or other statements in his said answer.

3rd. Because this defendant filed said XI (eleven) exhibits to sustain his answer, withholding nothing from this honorable court, and to obviate the expense of taking testimony by deposition in order to sustain his answer upon the hearing of any interlocutory motion.

4th. Because it was agreed between counsel for complainant and defendants Hanbury and Rorke that defendants would produce on the motion for a receiver the originals of said exhibits, and that said objection was withdrawn.

5th. Because the order for a receiver operates as injunction, and, in resisting the appointment of a receiver, a defendant has a right to use the same means as he would be entitled to employ
82 upon a motion to dissolve an injunction, namely, his answer, sustained by exhibits filed therewith and made part thereof.

6th. Because each of said exhibits, the originals thereof being produced, sustains the defences made by said answers & withholds nothing from the court and is free from other technical objection.

ANDREW M. RORKE,
Solicitor & of Counsel for Defendant, M. A. Rorke.

Endorsed: Filed June 16, 1883. Wm. H. Bradley, cl'k.

83 *Exceptions to Master's Report by Anna Hanbury.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON, ANNA HANBURY, *et als.*, Defendants.

Exceptions.

Exceptions taken by the defendant, Anna Hanbury, to the report made herein by Elijah B. Sherman, Esq., one of the masters in chancery of this court, on exceptions of complainant to the answer of Anna Hanbury upon the motion of complainant to strike from said answers certain exhibits thereto attached, which report was filed the 11th day of June, A. D. 1883.

First (1st) exception to said master's report. For that the
84 said master in his report says that, as to the third (3), fourth (4), and fifth (5) exceptions of said complainant to the answer of the defendant, Anna Hanbury, he, the said master, is of opinion that they should be severally sustained, for the reasons therein stated and set forth, because the complainant, in said exception thirdly (3) taken, says that she excepts to the recitation in said answer of any and all matters which have occurred since the filing of the said bill of com-

plaint, for the reason that the same are impertinent and unnecessarily cumbersome, whereas the said master should have overruled said exception as to the defendant, Anna Hanbury, who had a right to allege and insist on, in her answer, all matters peculiar to her defence, not only those which had transpired prior to the 15th of February, A. D. 1883, the date of the filing of the original bill, but also those which had transpired since that date indicating collusion between the nominal complainant and the defendant, Miner Nathaniel Knowlton.

85 Second exception to said master's report. For that the said master in his report says that said fourth (4) exception should be sustained because the complainant excepts to all statements in said Hanbury's answer tending to show that complainant is not the proper party plaintiff, for the reason that the same is inconsistent with the defence attempted to be pleaded in her said answer, to wit, a purchaser for value without notice, &c., of the equitable title of the plaintiff in the premises, whereas the said master should have overruled said exception as to said defendant Hanbury, because the said defendant submits that there is no rule of this court and no law limiting a defendant to one single line of defence against a complainant's claim made by bill in this court, and because this defendant may insist not only that she is "a *bona fide* purchaser for a valuable consideration without notice," but also insist that the suit nominally prosecuted in the name of Emily Hoyt is virtually for the benefit of the defendant, Miner N. Knowlton, and that a conspiracy and

86 confederacy exists between said Knowlton, his solicitor, and said nominal complainant's solicitor to prosecute this suit in the interest of said defendant, Miner N. Knowlton, and that the same matters have been litigated and are still virtually being litigated between the defendant Hanbury and said Knowlton and Hoyt in the superior court of Cook county.

Third (3) exception to said master's report. For that the said master in his report says that said fifth (5) exception should be sustained because the complainant excepts to all allegations tending to show that this court has not jurisdiction of the subject as well as of the parties herein, for the reason that by answering to the merits herein the defendant Hanbury has waived said objections, whereas the said master should have overruled said fifth (5) exception as to the defendant Hanbury, because the allegations in her answer relied upon by complainant for the purpose of sustaining her said fifth (5) exception were inserted therein by the defendant, Anna Hanbury, to furnish a truthful statement of all the facts in this

87 cause within *her* knowledge, information, and belief of this defendant for the convenience of this honorable court.

That in the matter of the motion of complainant to strike certain papers from the files the said master finds that, as to the 1st, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th objections made by complainant to the answer of the defendant, Anna Hanbury, the motion should be sustained and the papers therein named should be stricken from the files, and the said master recommends that the motion of the said complainant be sustained, for the reasons that the making

of the said documents mentioned in the foregoing objections part of the answer of said defendant Hanbury and exhibits thereto violates the rule and practice of chancery pleading in this court, which requires matters to be expressed in brief and succinct terms and to contain no unnecessary recitals of deeds, documents, contracts, or other instruments "*in hæc verba*," or other impertinent or scandalous matter not relevant to the suit, whereas the master should
88 have overruled said objections—

I. Because the rule referred to, viz., rule 26, Bradley's Edition of the Rules, 1883, pg. 68, relates to bills and not to "answers."

II. Because defendant Hanbury in her answer advisedly refers to the exhibits, to wit, I to XI, inclusive, to obviate all unnecessary recitals of deeds, &c., &c.

III. Because defendant Hanbury filed said eleven (XI) exhibits to sustain her answer and to prevent delay and save the expense of taking depositions on the hearing of a preliminary motion before issue joined.

IV. Because it was agreed between the complainant and this defendant, by their respective attorneys and counsel, that this defendant would produce on the hearing of the motion for a receiver, and whensoever else this honorable court might desire them, the originals of said exhibits, and that thereupon said objections and exceptions were withdrawn.

V. Because an order for the appointment of a receiver operates as an injunction, and, in resisting a motion for such order, a de-
89 fendant has the right to sustain her answer by exhibits virtually filed therewith and made part thereof just as upon a motion to dissolve an injunction.

VI. Because said exhibits, the originals being produced, respectively, sustain the statements in this defendant's answer furnishing the documentary evidence within the control of this defendant.

VII. Because said eleven (11) exhibits are free from all just objection or exception.

M. A. RORKE & SON,
Att'ys & of Counsel for the Defendant, Anna Hanbury.

Endorsed: Filed June 16, 1883. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the eighteenth day of June, 1883, there were filed in said clerk's office two certified copies of orders from the superior court of Cook county, Illinois, in said entitled cause; which said certified copies are in the words and figures following, to wit:

90 UNITED STATES OF AMERICA, }
State of Illinois, County of Cook, } *ss:*

Pleas before the Honorable George Gardner, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being

the second day, of April, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the hundred and seventh.

Present: The Honorable George Gardner, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney; Seth F. Hanchett, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the thirteenth day of April, in the year of our Lord one thousand eight hundred and eighty-three, the same being one of the days of the April term of the superior court of Cook county, the following, among other, proceedings were had in said court and entered of record, to wit:

91 MINOR N. KNOWLTON *vs.* ANNA HANBURY. } 84543.

Bill.

On motion of complainant it is ordered that this cause be, and it is hereby, dismissed at complainant's costs, which are duly paid, and without prejudice.

STATE OF ILLINOIS, *County of Cook,* } *ss:*

I, John J. Healy, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain order made and entered of record in said court in a certain cause lately pending in said court, on the chancery side thereof, wherein Minor N. Knowlton was plaintiff and Anna Hanbury defendant.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 8th day of June, A. D. 1883.

[SEAL.] JNO. J. HEALY, *Clerk.*

Received a copy of the within notice this 8th day of June, A. D. 1883.

E. J. HILL,
Sol'r for Emily Hoyt,
Per R. W. H.

(Endorsed:) Filed June 18, 1883. Wm. H. Bradley, cl'k.

92 UNITED STATES OF AMERICA, *State of Illinois, County of Cook,* } *ss:*

Pleas before the Honorable George Gardner, one of the judges of the superior court of Cook county, in the State of Illinois, holding a branch court of said court, at a regular term of said superior court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the first Monday, being the fourth day, of June, in the year of our Lord one thousand eight hundred and

eighty-three, and of the Independence of the United States of America the hundred and seventh.

Present: The Honorable George Gardner, judge of the superior court of Cook county; Luther Laflin Mills, State's attorney; Seth F. Hanchett, sheriff of Cook county.

Attest: JOHN J. HEALY, *Clerk.*

Be it remembered that heretofore, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and eighty-three, the same being one of the days of the June term of the superior court of Cook county, the following, among other, proceedings were had in said court and entered of record, to wit:

93 ANNA HANBURY *vs.* LYMAN BAIRD *et al.* } 85764.

Bill.

On motion of complainant it is ordered that the defendant, Emily Hoyt, plead, answer, or demur to the bill of complaint in this cause, as amended, on or before the 12th day of June instant, said defendant, Emily Hoyt, by E. J. Hill, Esq., her solicitor, consenting to the entry of this order.

94 The following is a copy of certain entry on the clerk'- docket of the superior court of Cook county:

ANNA HANBURY *vs.* LYMAN BAIRD, MINER NATHANIEL KNOWLTON, WILLIAM H. BRADLEY, LEWIS H. BOUTELL, CHARLES J. SHIELDS, EMILY HOYT, and UNKNOWN OWNERS. } 3282, 85764.

Bill.

Commenced Feb'y 8, 1883.
M. A. Rorke & Son, compl't's sol'rs.

STATE OF ILLINOIS, *County of Cook,* } *ss:*

I, John J. Healy, clerk of the superior court of Cook county, in and for the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain order made and entered of record in said court and a certain entry of title appearing on the clerk's docket of said court in a certain cause still pending in said court, on the chancery side thereof, wherein Anna Hanbury is complainant and Lyman Baird and others are defendants.

95 In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, this 8th day of June, A. D. 1883.

[SEAL.] JNO. J. HEALY, *Clerk.*

Received a copy of within notice this 8th day of June, A. D. 1883.
E. J. HILL,
Sol'r for E. Hoyt,
Per R. W. H.

(Endorsed:) Filed June 18, 1883. Wm. H. Bradley, clerk.

96 On the same day, to wit, on the eighteenth day of June, in the adjourned May term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the motion of the defendants for the complainant to file a good bond for costs, and the motion of the complainant to confirm the master's report filed May seventeenth, 1883, and the exceptions of defendants Hanbury and Rorke to the master's report filed June eleventh, 1883, and the motion of the complainant for the appointment of a receiver herein, as prayed in the bill of said complainant, now come on to be heard; and, the said motion of defendants for a new bond being now withdrawn by leave of court, the hearing of the matters hereinbefore mentioned is had before the court, and the court, after hearing the arguments of counsel, overrules the motion for the appointment of a receiver.

It is ordered by the court that the defendants Hanbury and Rorke be enjoined and restrained from making any sale of property
97 named in the bill herein belonging to said Hanbury until further order herein, and that a writ of injunction issue therefor.

The other matters included in this hearing, not being sufficiently considered by the court, are taken under advisement.

Afterwards, to wit, on the twenty-fifth day of June, in the adjourned May term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

The court having considered the exceptions of Hanbury and Rorke to the master's report filed herein on the eleventh instant overrules the same and confirms said report, and the defendants Hanbury and Rorke are hereby allowed thirty days to file an amended answer herein.

Afterwards, to wit, on the 24th day of July, 1883, came Anna Hanbury and M. A. Rorke, by their solicitors, and filed in said clerk's office their amended answers in said entitled cause; which said amended answers are in the words and figures following, to wit:

98 *Amended Answer by Order and Leave of Court. Entered June 25th*, 1883.

Circuit Court of the United States, Northern District of Illinois, *ss.* In Equity.

EMILY HOYT *vs.* MINER N. KNOWLTON *et als.*

The answer of Anna Hanbury, one of the defendants, to the bill of complaint, as amended, of Emily Hoyt, complainant.

This defendant, reserving to herself all right of exception to the said bill of complaint, for answer thereto, says—

That she denies that the complainant is now or has been since about April 1st, A. D. 1877, the owner of the buildings or lessee of the lot upon which the same are erected known as numbers 392 and and 394 South Clark street, in Chicago, Cook county, Illinois, as in bill stated.

That she denies that on the 24th day of July, A. D. 1878, the complainant, by letter of attorney, constituted Miner W. Knowlton her attorney, in manner and form as in bill stated, as she has been informed and believes.

That she denies that the rents of said property, numbers 392 and 394 South Clark street, have aggregated the amount or said premises were by complainant ever intrusted to said Knowlton or that, by virtue of said letter of attorney, he received all or any part of said rents or, in the aggregate, the sum of $6,000.00 or any other sum in bill in that behalf stated.

99 That she denies that said Knowlton has failed or neglected to account to or with the complainant for said moneys or that he has purchased with the moneys of said complainant the real estate in bill in that behalf described.

That she denies that with the complainant's money said Knowlton erected on lot No. 57 a brick house or barn.

That she denies that Knowlton at any time purchased for the complainant, with her money, for any purpose, a note of June 25th, A. D. 1877, for the sum of $1,800.00, made by Blanche D. McKee and William H. McKee, secured by trust deed to Lyman Baird, trustee, of certain real estate in bill mentioned.

That she denies that the lands upon which said trust deed is "predicated" are a portion of any lands purchased by Knowlton with money of the complainant.

That she denies that Knowlton turned over to the complainant the said note or informed her that no interest had been paid thereon since the 25th day of June, A. D. 1881.

That she denies that the complainant ever applied to the defendant, Lyman Baird, trustee, to sell said real estate, not then knowing

that said Knowlton had also purchased the equity of redemption of the lands, as in bill stated or at all.

That it may be true that Lyman Baird made the computation of interest on said $1,800.00 in bill stated, and she admits that he caused the trustee's notice of sale of the real estate to be published in the Inter-Ocean newspaper, as she learned for the first time on the 31st of January, 1883.

100 That she denies that the complainant ever called upon said Knowlton to furnish the account or that said Knowlton has failed or neglected so to do, as in bill stated.

That she believes it to be true that about the end of June, A. D. 1882, she made the acquaintance of said Knowlton in connection with a business transaction.

That she admits that she and Knowlton entered into an agreement, in substance, as she has been informed and verily believes, set out in complainant's bill, but for greater certainty craves leave to refer to the said original agreement in the power and control of this defendant, ready to be produced when this court may require it.

That she denies that Miner N. Knowlton made the purchase of the property in bill described with the moneys of the complainant or that the relation of trustee and *cestui que trust* ever existed or now exists between said Knowlton and the complainant, so far as the real estate conveyed by Knowlton to this defendant is concerned.

That she denies that the said agreement between said Knowlton and this defendant was in violation of the trust in bill stated, and that she denies the existence of any trust, express, resulting, or otherwise, between said complainant and Knowlton, in reference to the Winthrop Place realty now owned by this defendant.

That she denies that said Knowlton and this defendant, in attempting to carry out said agreement have fallen into disputes or engaged in expensive litigation over the property of said complainant.

101 That she denies that the property contracted to be and afterwards conveyed by Knowlton to her was ever the property of said complainant.

That she denies that she through false or fraudulent representations or undue influence ever said Knowlton procured said written agreement from him, or said two warranty deeds conveying said Winthrop Place realty to her or the possession of said premises, or that she thereby is now collecting the rents of said premises from the tenants in possession thereof to any amount whatsoever, as in bill in that behalf stated.

That she admits that at the time of the filing of the complainant's bill in this cause that the rents amounted to about $110.00 per month.

That she denies that she represented to Knowlton at the time in bill stated that she had a few years before that time, at Boston, Massachusetts, where in said bill it is stated she formerly resided, inherited a considerable fortune of, to wit, $100,000.00, or that in the course of time the same had been spent, excepting about the sum of $20,000.00, or that under the advice of friends or careful counsel

Afterwards, to wit, on the 24th day of July, 1883, came Anna Hanbury and M. A. Rorke, by their solicitors, and filed in said clerk's office their amended answers in said entitled cause; which said amended answers are in the words and figures following, to wit:

98 *Amended Answer by Order and Leave of Court. Entered June 25th*, 1883.

Circuit Court of the United States, Northern District of Illinois, *ss.* In Equity.

EMILY HOYT *vs.* MINER N. KNOWLTON *et als.*

The answer of Anna Hanbury, one of the defendants, to the bill of complaint, as amended, of Emily Hoyt, complainant.

This defendant, reserving to herself all right of exception to the said bill of complaint, for answer thereto, says—

That she denies that the complainant is now or has been since about April 1st, A. D. 1877, the owner of the buildings or lessee of the lot upon which the same are erected known as numbers 392 and and 394 South Clark street, in Chicago, Cook county, Illinois, as in bill stated.

That she denies that on the 24th day of July, A. D. 1878, the complainant, by letter of attorney, constituted Miner W. Knowlton her attorney, in manner and form as in bill stated, as she has been informed and believes.

That she denies that the rents of said property, numbers 392 and 394 South Clark street, have aggregated the amount or said premises were by complainant ever intrusted to said Knowlton or that, by virtue of said letter of attorney, he received all or any part of said rents or, in the aggregate, the sum of $6,000.00 or any other sum in bill in that behalf stated.

99 That she denies that said Knowlton has failed or neglected to account to or with the complainant for said moneys or that he has purchased with the moneys of said complainant the real estate in bill in that behalf described.

That she denies that with the complainant's money said Knowlton erected on lot No. 57 a brick house or barn.

That she denies that Knowlton at any time purchased for the complainant, with her money, for any purpose, a note of June 25th, A. D. 1877, for the sum of $1,800.00, made by Blanche D. McKee and William H. McKee, secured by trust deed to Lyman Baird, trustee, of certain real estate in bill mentioned.

That she denies that the lands upon which said trust deed is "predicated" are a portion of any lands purchased by Knowlton with money of the complainant.

That she denies that Knowlton turned over to the complainant the said note or informed her that no interest had been paid thereon since the 25th day of June, A. D. 1881.

That she denies that the complainant ever applied to the defendant, Lyman Baird, trustee, to sell said real estate, not then knowing

that said Knowlton had also purchased the equity of redemption of the lands, as in bill stated or at all.

That it may be true that Lyman Baird made the computation of interest on said $1,800.00 in bill stated, and she admits that he caused the trustee's notice of sale of the real estate to be published in the Inter-Ocean newspaper, as she learned for the first time on the 31st of January, 1883.

100 That she denies that the complainant ever called upon said Knowlton to furnish the account or that said Knowlton has failed or neglected so to do, as in bill stated.

That she believes it to be true that about the end of June, A. D. 1882, she made the acquaintance of said Knowlton in connection with a business transaction.

That she admits that she and Knowlton entered into an agreement, in substance, as she has been informed and verily believes, set out in complainant's bill, but for greater certainty craves leave to refer to the said original agreement in the power and control of this defendant, ready to be produced when this court may require it.

That she denies that Miner N. Knowlton made the purchase of the property in bill described with the moneys of the complainant or that the relation of trustee and *cestui que trust* ever existed or now exists between said Knowlton and the complainant, so far as the real estate conveyed by Knowlton to this defendant is concerned.

That she denies that the said agreement between said Knowlton and this defendant was in violation of the trust in bill stated, and that she denies the existence of any trust, express, resulting, or otherwise, between said complainant and Knowlton, in reference to the Winthrop Place realty now owned by this defendant.

That she denies that said Knowlton and this defendant, in attempting to carry out said agreement have fallen into disputes or engaged in expensive litigation over the property of said complainant.

101 That she denies that the property contracted to be and afterwards conveyed by Knowlton to her was ever the property of said complainant.

That she denies that she through false or fraudulent representations or undue influence ever said Knowlton procured said written agreement from him, or said two warranty deeds conveying said Winthrop Place realty to her or the possession of said premises, or that she thereby is now collecting the rents of said premises from the tenants in possession thereof to any amount whatsoever, as in bill in that behalf stated.

That she admits that at the time of the filing of the complainant's bill in this cause that the rents amounted to about $110.00 per month.

That she denies that she represented to Knowlton at the time in bill stated that she had a few years before that time, at Boston, Massachusetts, where in said bill it is stated she formerly resided, inherited a considerable fortune of, to wit, $100,000.00, or that in the course of time the same had been spent, excepting about the sum of $20,000.00, or that under the advice of friends or careful counsel

to preserve the residue of said inheritance the $20,000.00, being all in cash, had been invested in 27 unimproved lots in the city of Boston.

That she denies that she ever made any false representations to said Knowlton, or that he ever confided in her or relied upon any statement ever made by her, or that he was by any representations of hers induced to enter into said agreement or to make any transfer of property.

That she denies that she ever stated or represented to said
102 Knowlton that said 27 lots were situated on a public street or were located within one block of the depot or station-house at Clarendon Hills, a new part of Boston, Massachusetts, on the Boston and Providence railroad.

That she further denies that said Knowlton entered into said agreement without taking any steps to learn about the location of said lots of land at Clarendon Hills.

That she denies that to further influence or persuade said Knowlton to enter into said agreement she produced the title deeds to said twenty-seven lots at Clarendon Hills or pointed to the consideration therein set forth for the purpose in bill stated, or that she then and there stated that she had paid for said lots nearly $20,000.00, or that said Knowlton believed that said Hanburg had paid for said lots the sum of $20,000.00, or that said Knowlton relied upon any alleged statement by her made, the making of which she solemnly denies.

That she denies the statement in bill in that behalf made that she is not an innocent purchaser "*bona fide*" for value, but holds the title to said lands in the city of Chicago subject to the (alleged) trust and the (alleged) equities of the complainant.

That she denies that she is a poor person or unable to respond or account for the rents which she is receiving out of her said Winthrop Place realty, or that aside from said property she has no other property.

That she denies that the defendant, Miner N. Knowlton, is insolvent or unable to respond in damages or otherwise for the moneys in bill mentioned or any other moneys, or that he has no property, either real or personal, not by law exempt from execution, for she submits and respectfully insists that all the costs and fees in
103 this cause taxable or chargeable heretofore against said complainant, Emily Hoyt, have been paid by said Miner N. Knowlton, as she has been informed and believes.

That she denies that the property of said complainant in, to wit, said county of Cook and State of Illinois is worth $10,000.00, and this defendant denies that said complainant owns any property in said last-named county and State of Illinois.

That she does not know and has not been informed, save by complainant's bill, whether or not the property upon which said trust deed is predicated is worth $2,000.00, or that it would not bring at forced sale the amount of the alleged incumbrance thereon.

That she denies that the property in Boston in bill in that behalf mentioned, and which was the property of this defendant prior to

the conveyance by her thereof to said defendant, Miner N. Knowlton, was incumbered for more than it would bring in cash, but she admits that it was taken by said Knowlton under said conveyance as being subject to an incumbrance and liens amounting to $1,000.00, besides liens for taxes.

And this defendant, answering the amendment to said original bill, says that on the 14th day of February, A. D. 1883, by deed of trust of that date and recorded the same day as document No. 448,371, in the recorder's office of Cook county, Illinois, and made between this defendant, of the 1st part, and Michael Andrew Rorke, a defendant, of the 2nd part, she conveyed to said defendant, Michael Andrew Rorke, the real estate alleged to be described in said bill
104 as amended as Nos., to wit, 18, 20, and 22 Winthrop Place, Chicago, Illinois, but by their proper description, to secure a loan of $3,200.00, and she, on said date, at said trustee's law office, received from said trustee, said Michael Andrew Rorke, said sum of $3,200.00 cash.

And this defendant, Anna Hanburg, further answering, submits and respectfully insists that she is a *bona fide* purchaser of the real estate in bill described as the lands and tenements Nos. 18, 20, and 22 Winthrop Place, Chicago, Cook county, Illinois, for a valuable consideration, to wit, the consideration specified, set forth in the agreement under seal, whereof an alleged copy is stated in the bill in this cause, to wit, exchange of lands subject to respective encumbrances, without notice, actual or constructive, of any claim of said Emily Hoyt, said complainant.

And this defendant says that she never heard of the complainant, Emily Hoyt, until after the filing of the bill in this cause.

And this defendant, answering, claims that she is entitled to the same protection under this her answer, setting up that she is a *bona fide* purchaser for said valuable consideration without notice, as above insisted upon, as if this defendant had set up the said defence by way of plea or demurrer to the said original bill of complaint and the amendment thereto.

And this defendant denies that the defendant is entitled to the relief prayed for in this cause.

And this defendant submits and respectfully insists that this suit is instituted in the name of the complainant for the supposed benefit of the said defendant, Miner N. Knowlton, but whether
105 with or without the knowledge of the said complainant this said defendant does not know, but submits that she has been informed and verily believes that said complainant has not any knowledge or information of the filing of the bill prior to the date or on the date of said filing.

And this defendant, further answering, craves leave to refer to the original articles of agreement made the 8th day of September, A. D. 1882, between Anna Hanburg, this defendant, and said defendant, Miner Nathaniel Knowlton, for an exchange of lands recorded 9th September, 1882, in Book 1266 of Record, on page 76, document No. 418,593.

Also to a warranty deed, made 28th September, 1882, between

said Miner Nathaniel Knowlton, of the 1st part, and Anna Hanburg, this defendant, of the 2nd part, recorded same day, in Book 1246 of Records, on page 198.

Also to a warranty deed, made 28th September, 1882, between said Miner Nathaniel Knowlton, of the 1st part, and said Anna Hanburg, of the 2nd part, recorded same day, in Book 1246 of Records, on page 199.

Also to a deed of trust from this defendant, Anna Hanburg, to the defendant, Michael Andrew Rorke, trustee, dated and recorded 14th February, A. D. 1883, in Book 1298 of Records, on page 64, document No. 448,371; all said four instruments being in the recorder's office of Cook county, Illinois, numbered as 1st, 2nd, and 3rd thereof, in the possession of this defendant, ready to be produced and proved, and the fourth thereof not in the possession of this defendant; but if not produced, then this defendant will have ready a transcript thereof from said recorder's office of Cook county,
106 to be produced when and where this honorable court shall direct, and this defendant will rely upon said several instruments at the hearing of the cause, as well as upon the evidence proved and documentary.

And this defendant craves leave to refer to the files and record of a certain cause, No. 84543, begun November 3rd, A. D. 1882, in the superior court of Cook county, State of Illinois, commenced by said Miner N. Knowlton against this defendant and dismissed by said Knowlton on the 13th day of April, A. D. 1883.

Also to the files and record of a certain cause, No. 85764, begun the 8th day of February, A. D. 1883, in said superior court of Cook county, brought by this defendant against said Lyman Baird, Miner N. Knowlton, and others and still pending in said court, and to the transcripts of said records and files of said two chancery suits, when produced, when and where this honorable court may require, the same reference being thereunto respectively had, will sustain the case made by this defendant's said answer.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith she is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainant's said bill contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

ANNA HANBURY.

M. A. RORKE & SON,
Attorneys and of Counsel for said Def.

Filed July 24th, 1883.

WILLIAM H. BRADLEY, *Clerk.*

107 *Amended Answer of M. A. Rorke, Trustee, per Order of Court. Entered June 25th, 1883.*

Circuit Court of the United States, Northern District of Illinois, *ss.*
In Equity.

EMILY HOYT *vs.* MINER N. KNOWLTON *et al.*

The answer of Michael Andrew Rorke, made on the 10th day of March, eighteen hundred and eighty-three, one of the defendants, to the amended bill of complaint of Emily Hoyt, complainant.

This defendant, reserving to himself all right of exception to the said bill of complaint as amended, for answer thereto says—

That he denies that the complainant is now or has been since about the first day of April, A. D. 1887, the owner of the buildings or lessee of the lot upon which the same are erected, known as Nos. 392 and 394 South Clark street, Chicago, in Cook county, in the district in bill stated.

That he denies that on the 24th day of July, 1878, the complainant, by letter of attorney, in manner and form as in bill stated, constituted the defendant, Miner N. Knowlton, her attorney-in-fact for any purpose.

That he denies that the rents of the premises, Nos. 392 and 394 South Clark street, at any time aggregated $150.00 per month, or that the said property was ever intrusted by said complainant to Miner N. Knowlton, or that said Knowlton by virtue of said
108 power of attorney ever collected $6,000.00 or any other sum of money, as in bill in that behalf stated.

That he denies that said Miner N. Knowlton has failed or neglected to account to or with the complainant for said moneys, or that he has purchased with the moneys of the complainant the real estate intended to be described in her bill of complaint in that behalf.

That he denies that with any moneys of the complainant said Miner N. Knowlton erected on lot No. 57 a brick dwelling-house or barn.

That he denies that said Knowlton, at the time in bill stated or at any other time, purchased for the complainant with her money, as in bill stated, for any purpose, a certain note, dated June 25th, 1877, for the sum of $1,800.00, made by Blanche D. McKee and William H. McKee, secured by trust deed to Lyman Baird, trustee, of certain real estate in bill apparently described.

That he denies that the lands upon which said trust deed is predicated are a portion of any lands purchased by said Knowlton with any moneys of the complainant, as in bill stated.

That he denies that Knowlton turned over to the complainant the said note, or informed her that no interest had been paid thereon since the 25th day of June, 1881.

That this defendant denies that the complainant ever applied to the defendant, Lyman Baird, trustee, to sell said real estate, not

then knowing that said Knowlton had also purchased the equity of redemption of the lands in bill stated or at all.

That this defendant says that he does not know and has not been informed, save by the complainant's bill, that at the time and
109 in the manner therein stated said Lyman Baird made the computation of interest in bill stated, or that pursuant to any such application said Lyman Baird caused notice of sale of the lands described in said trust deed, pursuant to the power of sale therein contained, to be published.

That this defendant denies that the complainant ever called upon said Knowlton to furnish the account or that he, Knowlton, has failed or neglected so to do, as in bill alleged.

That this defendant, answering, says that it may be true that said Knowlton and Anna Hanburg became acquainted at or about the time in bill stated, but of this this defendant has not any knowledge, information, or belief save as derived from the bill herein.

That this defendant believes it to be true that the defendants, Miner N. Knowlton and Anna Hanburg, entered into an agreement, in substance set out in bill in this cause, but, for greater certainty, refers this honorable court to the said original agreement, in the possession of this defendant, ready to be produced, which said agreement was recorded in the recorder's office on the 9th day of September, 1883, in Book No. 1266 of records, on page 76, as by reference thereunto will more fully appear.

That he denies that Knowlton made the purchase of the property in bill in that behalf stated with moneys belonging to the complainant.

That he denies that said agreement between said Knowlton and Hanberg was in violation of any trust.

That this defendant denies that, in attempting to carry out
110 said agreement, said Knowlton and Hanburg have fallen into disputes or engaged in expensive litigation over the property of the said complainant.

That he also denies that the property contracted to be conveyed by said Knowlton to said Hanburg was ever the property of said complainant.

That he denies that said Anna Hanburg, through false or fraudulent representations or undue influence over the said Knowlton, procured the said written agreement from him, or procured from him warranty deeds conveying said property to her, or procured from him the possession thereof, or is now collecting the rents therefor from the tenants in possession thereof, to any amount whatsoever, as in bill stated.

That he denies that said Anna Hanburg represented to said Knowlton that she had, a few years before that time, at Boston, Massachusetts, where it is therein in bill stated she formerly resided, inherited a considerable fortune of upwards of $100,000.00, or that in the course of time the same had been spent exeepting about the sum of $20,000.00, or that, under the advice of friends or careful counsel, to preserve the residue of said inheritance, the said $20,000.00,

being all in cash, had been invested in 27 unimproved lots in said city of Boston.

And this defendant, further answering, denies that said representations were ever made, or that said Miner N. Knowlton ever trusted or confided in the defendant Hanburg or relied upon any statement ever made by her, or was by any representations of her, said Hanburg, induced to enter into said agreement or to make transfers of property.

And this defendant denies that said Anna Hanburg ever
111 stated or represented to said Knowlton that said 27 lots were situate on a public street or were located within one block of the depot or station-house at Clarendon Hills, a new part of the city of Boston, Mass., on the Boston and Providence railroad.

And this defendant denies of his own knowledge that said Knowlton ever entered into said agreement without taking any steps to learn all about the location of said lots of land at Clarendon Hills, but that, on the contrary, he took such steps as a prudent man would who was about to make a purchase or exchange of realty.

And this defendant denies that, to further influence or persuade said Knowlton to enter into such agreement, said Hanburg produced title deeds to said 27 lots at Clarendon Hills or pointed to the consideration therein stated for the purpose in bill stated, or that she stated that she had paid therefor nearly $20,000.00, or that said Knowlton believed that said Hanburg had paid for said lots $20,000.00, or that said Knowlton relied upon any statement ever made, this defendant not admitting or denying that any ever were made, by the defendant, said Hanburg.

That this defendant denies the allegation and statement in complainant's bill in that behalf that said Anna Hanburg is not an innocent purchaser, *bona fide*, for value, but holds the title to said lands in the city of Chicago subject to a trust or equities of the complainant.

That this defendant denies that the defendant, Anna Hanburg, is a poor person or unable to respond or account for the rents said bill states that she is receiving, or that aside from said property she has no other property.

That he also denies that Miner N. Knowlton is insolvent
112 or unable to respond in damages for, to wit, breach of contract, to wit, or otherwise, or that he has no property, either real or personal, not by law exempt from execution.

That he denies that the property of the complainant is worth in cash about $10,000.00 or any other sum, to wit, within the jurisdiction of this court.

That he does not know, has not been informed, and has no opinion as to whether or not the property on which said trust deed is predicated is worth about the sum of $2,000.00, or that it would not bring at forced sale the amount of the incumbrance thereon in bill in that behalf stated, but requires the complainant to make proof of said allegation.

And this defendant denies that the said property, to wit, in Bos-

then knowing that said Knowlton had also purchased the equity of redemption of the lands in bill stated or at all.

That this defendant says that he does not know and has not been informed, save by the complainant's bill, that at the time and
109 in the manner therein stated said Lyman Baird made the computation of interest in bill stated, or that pursuant to any such application said Lyman Baird caused notice of sale of the lands described in said trust deed, pursuant to the power of sale therein contained, to be published.

That this defendant denies that the complainant ever called upon said Knowlton to furnish the account or that he, Knowlton, has failed or neglected so to do, as in bill alleged.

That this defendant, answering, says that it may be true that said Knowlton and Anna Hanburg became acquainted at or about the time in bill stated, but of this this defendant has not any knowledge, information, or belief save as derived from the bill herein.

That this defendant believes it to be true that the defendants, Miner N. Knowlton and Anna Hanburg, entered into an agreement, in substance set out in bill in this cause, but, for greater certainty, refers this honorable court to the said original agreement, in the possession of this defendant, ready to be produced, which said agreement was recorded in the recorder's office on the 9th day of September, 1883, in Book No. 1266 of records, on page 76, as by reference thereunto will more fully appear.

That he denies that Knowlton made the purchase of the property in bill in that behalf stated with moneys belonging to the complainant.

That he denies that said agreement between said Knowlton and Hanberg was in violation of any trust.

That this defendant denies that, in attempting to carry out
110 said agreement, said Knowlton and Hanburg have fallen into disputes or engaged in expensive litigation over the property of the said complainant.

That he also denies that the property contracted to be conveyed by said Knowlton to said Hanburg was ever the property of said complainant.

That he denies that said Anna Hanburg, through false or fraudulent representations or undue influence over the said Knowlton, procured the said written agreement from him, or procured from him warranty deeds conveying said property to her, or procured from him the possession thereof, or is now collecting the rents therefor from the tenants in possession thereof, to any amount whatsoever, as in bill stated.

That he denies that said Anna Hanburg represented to said Knowlton that she had, a few years before that time, at Boston, Massachusetts, where it is therein in bill stated she formerly resided, inherited a considerable fortune of upwards of $100,000.00, or that in the course of time the same had been spent excepting about the sum of $20,000.00, or that, under the advice of friends or careful counsel, to preserve the residue of said inheritance, the said $20,000.00,

being all in cash, had been invested in 27 unimproved lots in said city of Boston.

And this defendant, further answering, denies that said representations were ever made, or that said Miner N. Knowlton ever trusted or confided in the defendant Hanburg or relied upon any statement ever made by her, or was by any representations of her, said Hanburg, induced to enter into said agreement or to make transfers of property.

And this defendant denies that said Anna Hanburg ever
111 stated or represented to said Knowlton that said 27 lots were situate on a public street or were located within one block of the depot or station-house at Clarendon Hills, a new part of the city of Boston, Mass., on the Boston and Providence railroad.

And this defendant denies of his own knowledge that said Knowlton ever entered into said agreement without taking any steps to learn all about the location of said lots of land at Clarendon Hills, but that, on the contrary, he took such steps as a prudent man would who was about to make a purchase or exchange of realty.

And this defendant denies that, to further influence or persuade said Knowlton to enter into such agreement, said Hanburg produced title deeds to said 27 lots at Clarendon Hills or pointed to the consideration therein stated for the purpose in bill stated, or that she stated that she had paid therefor nearly $20,000.00, or that said Knowlton believed that said Hanburg had paid for said lots $20,000.00, or that said Knowlton relied upon any statement ever made, this defendant not admitting or denying that any ever were made, by the defendant, said Hanburg.

That this defendant denies the allegation and statement in complainant's bill in that behalf that said Anna Hanburg is not an innocent purchaser, *bona fide*, for value, but holds the title to said lands in the city of Chicago subject to a trust or equities of the complainant.

That this defendant denies that the defendant, Anna Hanburg, is a poor person or unable to respond or account for the rents said bill states that she is receiving, or that aside from said property she has no other property.

That he also denies that Miner N. Knowlton is insolvent
112 or unable to respond in damages for, to wit, breach of contract, to wit, or otherwise, or that he has no property, either real or personal, not by law exempt from execution.

That he denies that the property of the complainant is worth in cash about $10,000.00 or any other sum, to wit, within the jurisdiction of this court.

That he does not know, has not been informed, and has no opinion as to whether or not the property on which said trust deed is predicated is worth about the sum of $2,000.00, or that it would not bring at forced sale the amount of the incumbrance thereon in bill in that behalf stated, but requires the complainant to make proof of said allegation.

And this defendant denies that the said property, to wit, in Bos-

ton, is the property of said defendant, Anna Hanburg, or since the 28th of September, 1882, that it has been her property.

That he also denies that said property was, to wit, from the 8th to the 28th of September, 1882, incumbered for more than it would bring in cash, or that such incumbrance, over and above $1,000.00 in said agreement specified were thereon at the time of the making said agreement between said Knowlton and Hanburg.

And this defendant, answering the amendment filed the 10th of March, A. D. 1883, whereby this defendant then first became a party to this suit, says that on the 14th day of February, 1883, by deed of trust of that date and recorded same day as document No. 448,371, in the recorder's office of Cook county, Illinois, and made between the said Anna Hanburg, of the 1st part, and this defendant, of the 2nd part, said Hanburg conveyed to this defendant the real
113 estate described in said bill, as amended, as Nos. 18, 20, and 22 Winthrop Place, but by their proper legal description, to secure a loan of $3,200.00, and that he then paid to her, said Anna Hanburg, in cash and on her order, the said sum of money; that he likewise denies that he has been counsel or solicitor for said Anna Hanburg during or throughout all the transactions between her and said Knowlton; that he also denies that at the time of the making of said conveyance or trust deed he, said Michael Andrew Rorke, had full or perfect or ample or complete or any notice of any false or fraudulent representations or of any misrepresentations through or by means of which the said Anna Hanburg acquired title to said property so conveyed to him, this defendant, in trust, as alleged or charged against her in her dealings with the defendant, Miner N. Knowlton, hereinbefore — said bill of complaint set forth, and he denies that any such representations were ever made.

And this defendant denies that the said Anna Hanburg ever made any false or fraudulent representations or misrepresentations to him, said Knowlton, in reference to the cost or value or location of her former real estate near Boston, Clarendon Hill, Massachusetts, as stated in said bill.

And this defendant denies that Hanburg and he have negotiated together the note secured by said trust deed.

And this defendant denies that there is any suit pending in the superior court of Cook county between said Hanburg and Knowlton on her part to reform the contract between them to specifically inforce the same.

And he denies that there is any suit in the said superior court of Cook county between said Knowlton, as complainant, and
114 said Hanburg now pending whereby said Knowlton seeks to rescind said contract, to wit, of exchange.

And he denies that he, said trustee, has ever had any notice of any false or fraudulent representations of said Anna Hanburg by any suit or matter of record or actually in fact, as in bill stated in that behalf.

And this defendant admits that the defendant, Charles J. Shields, is the tenant in possession of the premises No. 22 Winthrop Place, and that defendant, William Lindsley, is the tenant in posses-

sion of the premises No. 20 Winthrop Place, and that Ransome N Givins is the tenant in possession of the premises known as the 2nd floor of No. 18 Winthrop Place, but this defendant denies that Alonzo G. Collins or Sarah L. Robb are, respectively, the tenants of the basement or first floor of No. 18 Winthrop Place.

And this defendant admits that he has been a resident since 1857, 24th September, and a citizen since 1856, about the month of October, of these United States.

And this defendant says he does not know and has not been informed, save by the said complainant's bill, what amount of rent said Anna Hanburg has collected of the tenants in said premises, but he denies that said complainant is entitled properly or in equity thereto.

And this defendant denies the reiterated statement by the complainant that said Anna Hanburg is insolvent or pecuniarily irresponsible, or that she has no other property, either real or personal, within the jurisdiction of this court not by law exempt from execution.

And this defendant, further answering, submits and respect-
115 fully insists that the defendant, said Anna Hanburg, is a *bona fide* purchaser of the real estate in bill described as the lands and premises known as Nos. 18, 20, and 22 Winthrop Place, Chicago, Cook county, Illinois, for a valuable consideration, to wit, the consideration specifically set forth in the agreement, intended to be set out in the original bill in this cause, without notice, actual or constructive, of any claim of said Emily Hoyt, the complainant.

And this defendant, answering, submits and respectfully insists that he, this defendant, as such trustee, on the 14th day of February, A. D. 1883, became *pro tanto* a *bona fide* purchaser from said defendant, Anna Hanburg, of the last above-mentioned real estate to the extent of the sum of $3,200.00, the amount of said loan of money on that day paid by this defendant at his office to her, said Hanburg, to wit, a valuable consideration, without notice of any claim of said Emily Hoyt, the complainant.

And this defendant claims that he is entitled to the same protection under this his answer, setting up, as above relied upon, that he, as such trustee, under the deed of trust in bill stated as amended 10th of March, 1883, is a *bona fide* purchaser of said Hanburg's real estate in Chicago, in bill meant to be described, for valuable consideration, to wit, said loan of $3,200.00 on said 14th of February, 1883, lent to her without notice of any claim of said Emily Hoyt as if this defendant had set up said defence by way of plea.

And this defendant craves leave to refer to the original articles of agreement made between said defendants, Miner N. Knowlton and Anna Hanberg, for an exchange of lands, recorded September 9th, A. D. 1882, at 9 a. m., in Book 1266 of Records, page 79, doc.
116 No. 418,593, in the recorder's office of Cook county, Illinois, or to a copy thereof when produced.

Also to the original warranty deed from Miner N. Knowlton to Anna Hanburg, recorded September 28th, A. D. 1882, at 3 p. m., in Book 1246 of Records, on page 198, as doc. No. 422,601, in the re-

corder's office of Cook county, Illinois, the original whereof is now in the control of this defendant, ready to be produced, whereby said Knowlton granted to Hanburg lots 1 and 2, in McKee's subdivision of lots Nos. 53, 54, 55, and 56, in H. M. Taylor's subdivision of block 43 of the C. T. subdivision of W. ½ and W. ½ of N. E. ¼ of lot *in* 17, T. 39 N., R. 14 E., of 3rd P. M.

Also to the original warranty deed from Miner Nathaniel Knowlton, a defendant, to Anna Hanburg, recorded September 28th, A. D. 1882, at 3 p. m., in Book 1246 of Records, on page 199, as doc. No. 422,602, which is now under the control of this defendant and ready to be produced, whereby said Knowlton granted and conveyed to said Hanburg lot No. 57, in said H. M. Taylor's subdivision last above described.

Also to a deed of trust from the defendant, Anna Hanburg, to M. A. Rorke, trustee, recorded the 14th day of February, A. D. 1883, in the recorder's office of Cook county, Illinois, on the 14th day of February, A. D. 1883, at — o'clock — m., and recorded in Book 1298 of Records, on page 64, as doc. No. 448,371, granting and conveying to said Rorke, trustee, the real estate described in the amended bill in this cause as No. 18, 20, and 22 Winthrop Place, to secure an indebtedness of thirty-two hundred dollars, as therein, by which original deed when produced, or by the transcript thereof, said facts hereinbefore relied on will more fully appear.

117 And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MICHAEL ANDREW RORKE, *Trustee.*

ANDREW M. RORKE,
Attorney and of Counsel for said Defendant.

Endorsed: Filed July 24th, 1883. William H. Bradley, clerk.

Afterwards, to wit, on the twenty-fifth day of July, 1883, came Emily Hoyt, by her solicitors, and filed in said clerk's office her replications to the answers of Michael A. Rorke and Anna Hanbury in said entitled cause; which said replications are in the words and figures following, to wit:

118 Circuit Court of the United States, Northern District of Illinois, *ss.* In Chancery.

EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON, ANNA HANBURG, MICHAEL ANDREW RORKE, *et al.*

The replication of Emily Hoyt to the answer of Michael Andrew Rorke, filed July 24th, 1883.

This repliant, saving and reserving to herself all and all manner of advantage of exception which may be had and taken to the manifold errors and uncertainties and insufficiencies of the answer of said defendant, for replication thereto, says that she will and doth aver, maintain, and prove the petition or bill by her filed in this cause to be true, certain, and sufficient in the law to be answered unto by said defendant, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed, traversed, or denied or avoided is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by her said petition or bill aforesaid she has heretofore prayed.

EDWARD J. HILL,
Solicitor for Emily Hoyt.

Endorsed: Filed July 25th, 1883. William H. Bradley, clerk.

119 *Replication.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court. In Chancery.

EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, *et al.*

The replication of Emily Hoyt to the answer of Anna Hanbury, filed July 24, 1883.

This repliant, saving and reserving to herself all and all manner of advantage of exception which may be had and taken to the manifold errors and uncertainties and insufficiencies of the answer of said defendant, for replication thereunto, says that she will and doth aver, maintain, and prove the petition or bill by her filed in this cause to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer con-

tained material or effectual in the law to be replied unto, confessed, traversed, or denied or avoided is true; all which matters and things this repliant is ready to aver, maintain, and prove as this
120 honorable court shall direct, and humbly prays as in and by her said petition or bill aforesaid she has heretofore prayed.

EDWARD J. HILL,
Sol'r for Emily Hoyt.

Endorsed: Filed Jul. 25, 1883. W. H. Bradley, clerk.

Afterwards, to wit, on the twenty-sixth day of July, in the July term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, *et al.* } In Chancery.

On motion of the complainant upon the pleadings on file and the proceedings heretofore had in the above-entitled cause, the report of E. B. Sherman, master, and the testimony of Miner N. Knowlton, after argument by counsel for the respective parties aforesaid, it is hereby ordered that, until the further order of court herein, the defendants, Anna Hanbury and Michael Andrew Rorke, be, and
121 hereby are, enjoined and restrained from conveying or incumbering in any way the premises known as number 18 Winthrop Place; also the premises known as number 20 Winthrop Place, and also the premises known as number 22 Winthrop Place, in the city of Chicago, in the State of Illinois, and that this order be deemed as in force from the twenty-fifth day of June, A. D. 1883.

On the same day, to wit, on the twenty-sixth day of July, in the July term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, *et al.* } In Chancery.

On motion of the complainant and on notice to the defendant, ordered that John G. Stetson be, and hereby is, appointed the examiner to take the testimony of the respective parties in this cause, to be taken at the city of Boston, Massachusetts, and that the complainant commence taking testimony before said examiner at the

clerk's office of the circuit court of the United States for the district of Massachusetts, in the city of Boston aforesaid, on the
122 eighth day of August, A. D. 1883, and close the same on or before the fifteenth day of August, A. D. 1883, and that, within thirty days thereafter, the defendants shall take their evidence in defence, and, within ten days thereafter, the complainant shall take her evidence in reply; this order to affect only the taking of the testimony of witnesses to be examined by either party at the city of Boston aforesaid before said examiner.

Afterwards, to wit, on the first day of October, in the adjourned October term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

On motion the defendants herein are hereby ruled to close their proofs herein by the first day of November next.

123 Afterwards, to wit, on the eighth day of October, in the adjourned October term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of the defendant, Anna Hanbury, for an order to pay to her the thirty-five dollars and sixty-four cents paid into court herein by A. G. Collins, and, after hearing the arguments of counsel, the court sustains said motion without prejudice and orders that said thirty-five dollars and sixty-four cents be paid to said Anna Hanbury, and that a check therefor be drawn upon the register to the order of M. A. Rorke & Son, her solicitors.

Afterwards, to wit, on the nineteenth day of October, in the adjourned October term of said court, 1883, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

124 EMILY HOYT
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, Trustee, &c. } In Chancery.

On motion of the defendants, Anna Hanbury and Michael Andrew Rorke, trustee, by their respective solicitors and attorneys of record, it is ordered that Henry W. Bishop, Esquire, one of the masters in chancery of this court, be, and he is hereby, appointed and designated "examiner" of this court, under the 67th rule of practice in equity and the several amendments thereto, to take testimony on behalf of the said defendants, Hanbury and Rorke, under the rule heretofore entered against all the defendants in said cause to close their proofs by the first day of November, A. D. 1883, and also to take evidence on behalf of said complainant in rebuttal thereto.

It is further ordered that said examiner take said evidence upon oral interrogatories, and that he have power to cause witnesses to appear before him as such examiner and to cause the production of books and papers in evidence before him as such examiner.

125 Afterwards, to wit, on the twenty-eighth day of April, in the adjourned March term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now come the parties, by their solicitors, and, on motion of E. J. Hill, Esq., complainant's solicitor, it is ordered that this cause be set down for hearing upon the pleadings and proofs.

Afterwards, to wit, on the seventh day of October, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY, MINER N. KNOWLTON, *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of the complainants for the appointment of a receiver herein, and, after hearing the arguments of counsel,
126 the court overrules said motion, with leave to said complainants to renew said motion if *they* shall so elect.

Afterwards, to wit, on the tenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

It is ordered that this cause be set for hearing on the fifteenth day of December next.

Afterwards, to wit, on the eighteenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause
127 being set for hearing this day, now comes on to be heard upon the pleadings and proofs, and, after hearing the arguments of counsel in part, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the nineteenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now again come the parties, by their solicitors, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing the concluding arguments of counsel, the court takes the same under advisement.

128 Afterwards, to wit, on the twenty-first day of November, 1884, the following opinion was delivered orally by Judge Gresham in said entitled cause; which said opinion is in the words and figures following, to wit:

Order.

124 EMILY HOYT
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, Trustee, &c. } In Chancery.

On motion of the defendants, Anna Hanbury and Michael Andrew Rorke, trustee, by their respective solicitors and attorneys of record, it is ordered that Henry W. Bishop, Esquire, one of the masters in chancery of this court, be, and he is hereby, appointed and designated "examiner" of this court, under the 67th rule of practice in equity and the several amendments thereto, to take testimony on behalf of the said defendants, Hanbury and Rorke, under the rule heretofore entered against all the defendants in said cause to close their proofs by the first day of November, A. D. 1883, and also to take evidence on behalf of said complainant in rebuttal thereto.

It is further ordered that said examiner take said evidence upon oral interrogatories, and that he have power to cause witnesses to appear before him as such examiner and to cause the production of books and papers in evidence before him as such examiner.

125 Afterwards, to wit, on the twenty-eighth day of April, in the adjourned March term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now come the parties, by their solicitors, and, on motion of E. J. Hill, Esq., complainant's solicitor, it is ordered that this cause be set down for hearing upon the pleadings and proofs.

Afterwards, to wit, on the seventh day of October, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY, MINER N. KNOWLTON, *et al.* } In Chancery.

Now come the parties, by their solicitors, and now comes on to be heard the motion of the complainants for the appointment of a receiver herein, and, after hearing the arguments of counsel,
126 the court overrules said motion, with leave to said complainants to renew said motion if *they* shall so elect.

Afterwards, to wit, on the tenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

It is ordered that this cause be set for hearing on the fifteenth day of December next.

Afterwards, to wit, on the eighteenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

127 Now come the parties, by their solicitors, and this cause being set for hearing this day, now comes on to be heard upon the pleadings and proofs, and, after hearing the arguments of counsel in part, further hearing herein is hereby postponed until to-morrow morning.

Afterwards, to wit, on the nineteenth day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now again come the parties, by their solicitors, and this cause again comes on to be heard in pursuance of the order of postponement entered herein yesterday, and, after hearing the concluding arguments of counsel, the court takes the same under advisement.

128 Afterwards, to wit, on the twenty-first day of November, 1884, the following opinion was delivered orally by Judge Gresham in said entitled cause; which said opinion is in the words and figures following, to wit:

Opinion of the Court, Oral.

In the Circuit Court of the United States for the Northern District of Illinois.

EMILY HOYT *vs.* ANNA HANBURY *et al.*

FRIDAY, *Nov.* 21, 1884.

GRESHAM, *J.:*

It appears that on September 8, 1882, Miner N. Knowlton was the owner of certain real estate in the city of Chicago, which was encumbered with a trust deed, amounting to $1,800, and Mrs. Anna Hanbury was the owner of twenty-seven lots in what is known as Clarendon Hills, a suburb of Boston, on the Boston & Providence railroad, which was encumbered with a debt of $1,000. On that day Knowlton and Mrs. Hanbury entered into a contract in writing for the exchange of these properties, Mrs. Hanbury assuming the payment of the encumbrance upon the Chicago property and Knowlton
129 assuming the payment of the encumbrance upon the Boston property. On the 28th of the same month warranty deeds were executed and exchanged, and each delivered possession to the other. On Nov. 3, 1882, Knowlton commenced a suit against Mrs. Hanbury in the superior court of Cook county to cancel the contract and his deed to her on the ground that he was induced to enter into the contract and make the exchange by false & fraudulent representations made by Mrs. Hanbury as to the location and value of the Boston property.

On February 15, 1883, Mrs. Emily Hoyt, of Stamford, Conn., Knowlton's sister, brought this suit against Mrs. Hanbury, Knowlton, and others, alleging that the Chicago property was bought by Knowlton with the complainant's money. The bill in this suit contains the same allegations of fraud against Mrs. Hanbury as are found in the bill in the suit in the State court. It prays that Knowlton's deed to Mrs. Hanbury be cancelled; that a resulting trust be decreed in favor of complainant against Knowlton, and that the complainant be invested with the legal title to the Chicago property.

The alleged fraudulent representations are that Mrs. Hanbury assured Knowlton the Boston property was situated within a square of or near the Clarendon Hills station, on the Boston and Providence railroad, when in fact it was much further from the station and on the opposite side of the railroad, and not worth more than the incumbrance upon it.
130 The bill alleges that Knowlton was ignorant of the value and location of the property, knew nothing about it, except from information received from Mrs. Hanbury, and that in good faith he relied solely upon her statements and conveyed to her the Chicago property on the faith of her representations as to the location and value of the Boston property.

The allegations of fraud are all denied in Mrs. Hanbury's answer. Knowlton's testimony, if trustworthy, sustains the allegations of the

bill. Mrs. Hanbury, on the contrary, testifies that she distinctly and repeatedly told Knowlton he must inform himself as to the location & value of the Boston property. Two letters written by Knowlton to real estate men in Boston, making inquiries about the property at that place, are in evidence; also replies to these letters, one being less favorable than the others. Shortly after the deeds were exchanged Knowlton visited Boston, and after going upon the property and seeing it he wrote to Mrs. Hanbury, describing his visit, making no complaints, and saying nothing of fraudulent representations, but asking directions as to certain minor details, about taxes, &c. During this brief visit to Boston Knowlton saw the parties who held the incumbrance upon the Boston lots and made an arrangement to pay it off. The plain inference from his letters to Mrs. Hanbury is that he was satisfied with
131 the exchange. The burden is upon the complainant to sustain the allegations of fraud, which has not been done. Knowlton's conduct is not consistent with his sworn testimony. If he had such perfect faith in Mrs. Hanbury as to make the exchange solely upon her representation as to the location and value of the Boston property, why did he write the two letters for information before the exchange? And if he was deceived by Mrs. Hanbury, why did he fail to inform her of the fraud in his letter to her when he visted Boston, went upon the lots and saw where they were located? It is plain from the evidence that Knowlton acted upon his own judgment and upon information received from others than Mrs. Hanbury in making the exchange. Previous to this agreement for the exchange Knowlton had transacted some business with Mrs. Hanbury; he had made loans of money to her from time to time for which he had charged 3 per cent. a month or 36 per cent. a year.

He had had some experience as a dealer in real estate in Chicago. He was quite able to take care of his own interests, and it is incredible that he entered into the contract with Mrs. Hanbury utterly ignorant of the character and value of the Boston property, relying solely upon what she said to him upon this subject.

There is nothing in the record showing Mrs. Hoyt tendered
132 a reconveyance of the Boston property to Mrs. Hanbury and demanded a deed for the Chicago property before this suit was brought. Without such a tender & demand the complainant had no right of action. Mrs. Hanbury had no knowledge of the existence of Mrs. Hoyt until this suit was brought, alleging that Knowlton was the complainant's agent for the management of certain real estate in the city of Chicago; that as such agent he was authorized to collect rents and to pay taxes and insurance; that he collected large sums of money for rent, which he used in the purchase of the Chicago property, taking the title in his own name. One of the allegations in the bill is that Knowlton is insolvent and a bankrupt. It is worthy of consideration that some time after Knowlton's suit had been commenced against Mrs. Hanbury his sister thus comes forward claiming the Chicago property on the ground that her brother had become indebted to her by being unfaithful to his trust

as her agent, and that she had permitted him, although insolvent and a bankrupt, to continue in the trust. It does not appear from the evidence that there is much, if any, difference in the values of the properties exchanged.

The bill as to Mrs. Hanbury and her codefendants, except Knowlton, is dismissed with costs. An interlocutory decree has
133 already been entered declaring a resulting trust in favor of the complainant against Knowlton. If any further relief is necessary in favor of the complainant against Knowlton counsel will prepare a decree.

134 On the same day, to wit, on the twenty-first day of November, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT *vs.* ANNA HANBURY, MINER N. KNOWLTON, and LYMAN Baird, Trustee; Michael Andrew Rorke, Charles J. Shields, William Lindsley, Sarah L. Robb, Ransome A. Givens, and Alonzo G. Collins.	In Chancery.

Bill as amended.

This cause coming on to be heard upon the pleadings and testimony, and all the objections as to the time and manner of taking the deposition of Miner N. Knowlton, alleged to have been taken *de bene esse*, having been waived by the counsel for defendants, Anna Hanbury and Michael Andrew Rorke, and the court, having heard the arguments of counsel and having considered the same, finds that the allegations of the bill are true as against the defendant Knowlton, and as to the remaining defendants the court finds for them and against the complainant:

135 It is therefore ordered, adjudged, and decreed by the court that the complainant's bill be dismissed, for want of equity, as to all the defendants except the said Miner N. Knowlton, and that said defendants recover of the complainant their proper costs, to be taxed by the clerk of this court.

And the complainant's solicitor not being ready to take a decree in her favor against the defendant Knowlton, this cause, as to him, is held for further action.

Afterwards, to wit, on the second day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now come the complainants, by *their* solicitor, and now comes on to be heard *their* motion for a rehearing herein, and, after hearing arguments on the part of the complainant, the court takes the same under advisement.

136 Afterwards, to wit, on the third day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

The court, having considered the motion of the complainants, by *their* solicitor, for a rehearing herein, denies the same.

Afterwards, to wit, on the sixth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now again come the parties, the complainant, by her counsel, and the defendant, Miner N. Knowlton, by his counsel, and it appearing that said defendant is indebted to the complainant, on account of the matters in her bill alleged, in the sum of seven thousand
137 four hundred and sixty-five dollars and seventy-two cents, on motion of the complainant's counsel, it is now ordered, adjudged, and decreed that she, the complainant, have and receive of and from the defendant, Miner N. Knowlton, said sum of seven thousand four hundred and sixty-five dollars and seventy-two cents ($7,465.72), with all proper costs, to be taxed by the clerk of this court.

Afterwards, to wit, on the twelfth day of December, in the adjourned October term of said court, 1884, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now comes the complainant, by her solicitor, and prays an appe to the Supreme Court of the United States from the decree enter herein on the twenty-first day of November last, which is allow upon her filing a bond herein within ten days, in the penal sum one thousand dollars, to be approved by the court; and it is order that all proceedings herein be stayed for ten days.

138 EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON *et al.* } In Equity.

Evidence for complainant, taken pursuant to the sixty-seventh ru of the Supreme Court of the United States in equity, as amende before me, John G. Stetson, examiner.

Present: Edward J. Hill, Esq., of counsel for complainant; A Cottrell, Esq., of counsel for defendants, Anna Hanbury and Micha Andrew Rorke.

Before me—

JOHN G. STETSON, *Examiner.*

(Here follows diagram marked p. 139.)

Deposition of Theodore B. Moses.

BOSTON, MASS., *Aug.* 8, 1883.

Direct examination by EDWARD J. HILL, Esq., of counsel f complainant:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Theodore B. Moses; 66; Boston, Mass.; land surveyor.

Int. 2. How long have you resided in Boston and vicinity?

Ans. Forty-three years.

Int. 3. State exactly where you reside, the street and number, o otherwise desigate the locality.

140 Ans. Ward 23, Boston; Dale street; no number.

Int. 4. How long have you resided there?

Ans. Thirty-four years.

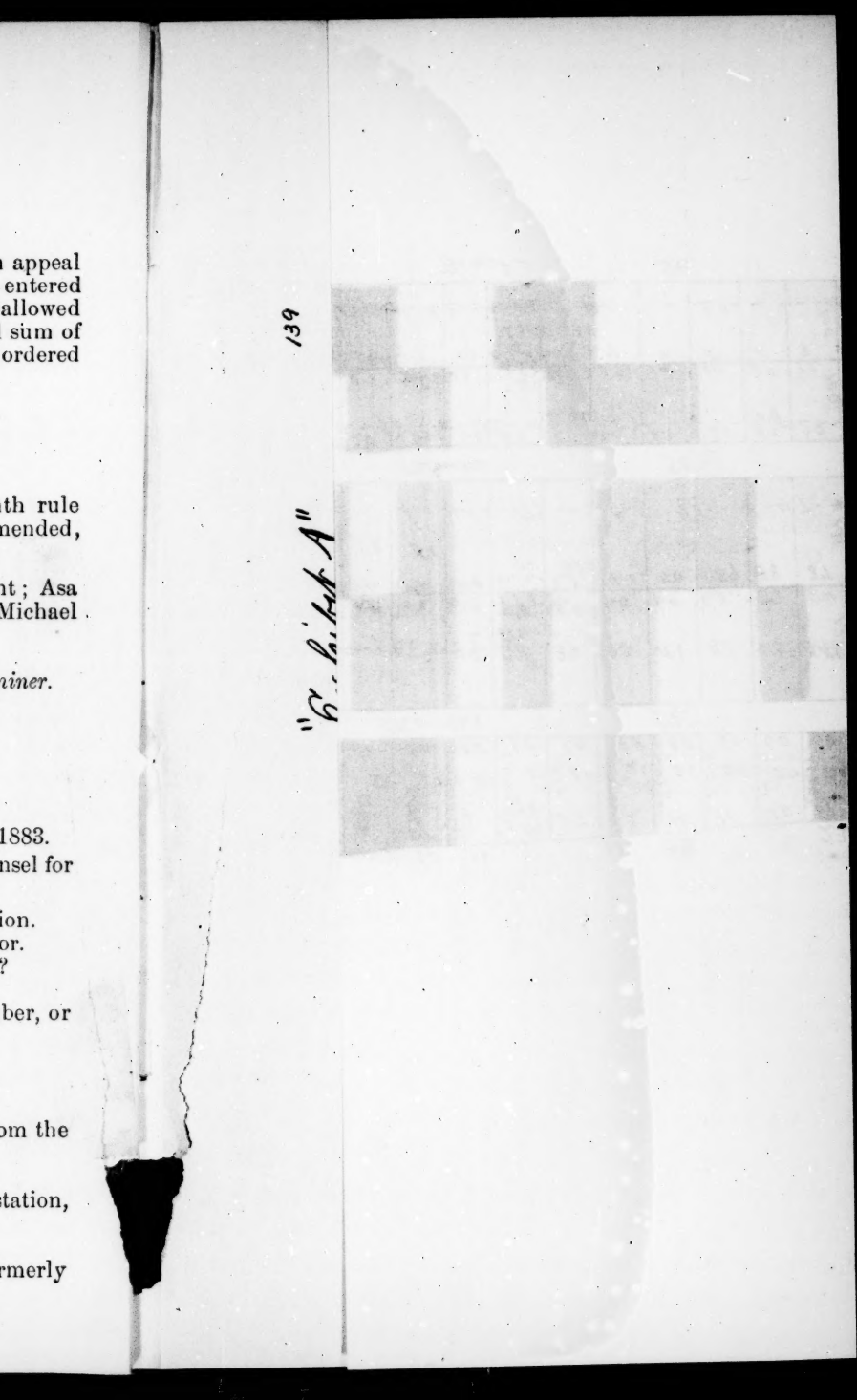
Int. 5. What is the distance to your house in an air line from th State house.

Ans. About 6½ miles.

Int. 6. How far is your residence from the Clarendon Hill statio on the Boston and Providence R. R.?

Ans. About 1,500 feet.

Int. 7. Has your attention been called to a tract of land formerl



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"Exhibit A"

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

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138 EMILY HOYT, Complainant,
vs.
MINER N. KNOWLTON *et al.* } In Equity.

Evidence for complainant, taken pursuant to the sixty-seventh rule of the Supreme Court of the United States in equity, as amended, before me, John G. Stetson, examiner.

Present: Edward J. Hill, Esq., of counsel for complainant; Asa Cottrell, Esq., of counsel for defendants, Anna Hanbury and Michael Andrew Rorke.

Before me—

JOHN G. STETSON, *Examiner.*

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Ans. Thirty-four years.

Int. 5. What is the distance to your house in an air line from the State house.

Ans. About 6½ miles.

Int. 6. How far is your residence from the Clarendon Hill station, on the Boston and Providence R. R.?

Ans. About 1,500 feet.

Int. 7. Has your attention been called to a tract of land formerly

owned by C. J. & J. H. Page, situate in an angle formed by road now known as Beach & Poplar Sts., said to contain about 18 acres, be the same more or less?

Ans. It has.

Int. 8. In what direction is this tract of land from your residence and about how far?

Ans. It's in a N. W. direction, and about 800 feet distant to the nearest point on this land.

Int. 10. How long have you been a land surveyor?

Ans. About forty years.

Int. 16. In what locality have your surveys been made during that time?

Ans. Principally in Roxbury, West Roxbury, Dorchester, and to a considerable extent throughout Norfolk county.

Int. 11. Have you occupied any official position during that time? And, if so, state what.

Ans. I have, as one of the selectmen of West Roxbury 6
141 years; on school committees of same town 12 years.

Int. 12. Have you occupied the position as official surveyor or have you performed work for any of the municipalities as well?

(Objected to as to form and also to substance as being immaterial.)

Ans. I have.

Int. 13. When and where and from whom?

Ans. I think I began in 1856 to do the surveying and civil engineering for the city of Roxbury; also for the town of West Roxbury about 10 years previous to its annexation to the city of Boston, which was, I think, about 1874.

Int. 14. And this Page tract of land and your residence — now situate within the corporate limits of the city of Boston?

Ans. They are.

Int. 15. Prior to annexation what was the name of the municipality in which this land was situate?

Ans. West Roxbury.

Int. 16. When was your attention first called to this tract of land?

Ans. In 1850.

Int. 17. How was it then enclosed?

(Objected to as immaterial and unimportant.)

Ans. By stone walls.

Int. 18. Describe the tract of land as it then was as near as you can, giving its boundaries by roads or streets and other lands.

(Same objection.)

142 Ans. Southwest by Poplar street, N. W. by Beach St., S. E. by land of Chamberlain and Rud. Taft, and N. W'y by land of Whittimore; it is now land of Hemicon.

Int. 19. Describe the contour of this tract of land and its general features topographically as it was when you first saw it in 1850.

(Same objection.)

Ans. A strip through the center running from S. E. to N. W. about 200 feet in width, more or less, was low, wet land; on the N. E'y line of the property the land is quite high, falling from that boundary line to the center quite regularly; on the Beach-street boundary at the corner of Beach & Poplar Sts. the land is quite elevated, and falls from that point to a point about midway between the Beach-St. line & the N. W. boundary to low land, the N. W. & N. E. cor's of the lot on high land falling from either corner to a point midway between to low land.

Int. 20. State, as near as you can, the angle of declivity on the respective sides.

(Same objection.)

Ans. I am unable to answer that question with any degree of definiteness.

Int. 21. How is this land now enclosed?

(Same objection.)

Ans. By stone walls.

Int. 22. What changes have been made in surface of this tract of land since you first saw it 1850, and what improvements, if any, have been placed thereon?

(Same objection.)

143 Ans. The changes in the surface have been the deepening of the ditch through the center and the partial construction of two streets across it; there has been one house built thereon.

Int. 23. With the exception of these improvements and changes what difference is there between the tract of land when you saw it in 1850 and as it is at the present time?

(Same objection.)

Ans. I do not know of any difference; possibly it may be less fertile.

Int. 24. What is this tract of land used for?

Ans. For purposes of husbandry.

Int. 25. How has it been used during all the time you have known it?

(Objected to as immaterial, unimportant.)

Ans. For the same purposes as now used.

Int. 26. I produce a tracing of a map or plan, which I will mark "Exhibit 'A';" please state, if you can, what Exhibit A represents.

(Objected to generally.)

Ans. It represents this tract of land referred to in this testimony.

Int. 27. Please state what "Exhibit A" is a copy of.

(Same objection.)

Ans. A copy of the original laying out of the tract into lots and

streets by Hurck, land surveyor, found at the assessors' rooms, in the city of Boston.

144 Int. 28. In what book or books in the assessors' office?

Ans. In a book of plans containing all the lands in West Roxbury.

Int. 29. Have you verified this tracing or copy, Exhibit A, with the plan or map in this book of plans and compared the same with the original copy on file in said office? And, if so, state whether it is a true and correct copy therefrom.

(Objected to generally.)

Ans. I have compared them, and it is a true copy.

(Counsel for compl't here offers this tracing or plan in evidence as marked "Exhibit A, Moses," and the same is marked Exhibit A, J. G. S., examiner, and the same is objected to as incompetent evidence by the defendant-.)

145 Int. 30. Upon this map the following lots, namely, one, 8, 9, 12, 13, 23, 24, 27, 28, 29, 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 78, 79, & 80 are colored in blue and marked with a letter "H." Has your attention been recently called to these lots marked and to their present situation on this tract of land?

Ans. It has.

Int. 31. Please detail and describe the situation and condition of these lots respectively or in groups, as you may designate them in your answer.

(Objected to as immaterial and unimportant.)

Ans. Lots 1, 69, & 73 are high and dry land; lots 17, 78, 79, & 80 are also high land and dry; lots 63 & 60 are dry land; 58, 56, 55, 47, 45, 41, 40, 39, 23, 24, 27, 28, 29, 13, 12, 9, & 8 are wet land and low; lot 35 is also wet land.

Int. 32. You have stated in your examination that one house had been built upon this tract of land. State, if you know, upon what lot and where.

(Same objection.)

Ans. Upon lot 67, corner of Poplar and Charles Sts.

Int. 33. With reference to the plan, indicate, if you please, the extent and nature of the improvements which you say have been made upon the streets designated thereon.

146 (Same objection.)

Ans. A partial construction of the two streets—Charles & James. This partial construction extends the whole length of the tract.

Int. 34. Of what does the partial construction of Charles street consist?

Ans. Leveling by excavation of the original surface to width of about forty feet and carrying the surplus material from Charles St. to James St.

Int. 35. Are you acquainted with the value of lots of land in the vicinity of these lands for building purposes?

(Objected to.)

Ans. Some.

Int. 36. State your means of such knowledge generally.

Ans. It comes largely through my avocation. I have bought and sold lands, attended auction sales of such lands, many times within twenty-five years last passed.

Int. 37. State the value, respectively, of the aforesaid 27 lots for city lots or building purposes.

(Objected to generally and because the witness is not competent and has not shown any means of knowing the value of said lots.)

Ans. Lots numbered 1, 6, 69, & 73, 2c. per sq. ft.; lots 77, 78, 79, 80, 63, & 60, 1c. p'r sq. ft.; lots 35, 29, 28, 27, 24, 23, 13, 12, 9, & 8, 1c. per ft.; lots 55, 56, 58, 47, 45, 41, 40, & 39, $\frac{1}{8}$ of 1c. p'r ft.

147 Int. 38. What makes the last-named lots of so little value as compared with the others?

Ans. They are too low and wet to build upon.

Int. 39. Are these lots, 55, 56, 58, 47, 45, 41, 40, and 39, ever covered with water; and, if so, at what season and what portion of the year?

Ans. Lots 55, 56, & 58 are partially covered with water, and lots 47, 45, 41, 40, & 39 are entirely covered for about 4 months through the fall, winter, & spring.

Int. 40. Are these lots of any value as city lots or for dwelling places?

Objected to.

Ans. I think not.

Int. 41. State why.

(Objected to.)

Ans. On account of their wetness.

Int. 42. State whether or not they are susceptible of drainage and at how great expense.

(Same objection.)

Ans. They can be drained, but the expense I should be obliged to estimate more carefully in order to give a proper answer.

Int. 43. What causes the depreciation in value of lots 77, 78, 79, 80, 63, & 60 from the first three lots which you mentioned of 100 per cent.?

(Same objection.)

148 Ans. Lots 77, 78, 79, & 80 are too uneven in their surface to admit of being converted into comfortable house lots from the fact that they stand from 4 to 6 feet above the grade of the street, and on their rear line are too elevated to be of any practical use or value; lots 60 & 63, those are objectionable on account of their rear being subjected to more or less overflow.

Int. 44. How about lots 35, 29, 28, 27, 24, 23, 13, 12, 9, and 8, respectively, in the same regard?

Ans. They are too low with reference to the highest land and the lowest land.

Int. 45. You state the elevation of lots 77, 78, 79, & 80 to be above the level of the street. What is their elevation in front and in the rear, as near as you can state?

Ans. In front the elevation will average 5 feet above the street, and in the rear it will average 50 feet, to the best of my judgment.

Int. 46. Lot 35 appears to be a front lot situate on Poplar street. Why do you place its value at only 1c. p'r sq. foot?

(Objected to.)

Ans. For the reason that it is low and wet land.

Int. 47. What is the distance from the nearest of these lots to the Clarendon Hill station, on the Boston and Providence R. R.? Which is the nearest lot?

Ans. Lot 35 is the nearest.

149 (Defendants' counsel objects to witness answering the remainder of the question unless he shall say that he has measured the same.)

The distance, 2,350 feet.

Int. 48. State whether you have measured it.

Ans. I have many times.

Int. 49. What is the distance from lot 35 by the nearest traveled roads and what are the roads by carriage to said station-house?

(Objected to unless it has been measured by the witness.)

Ans. The distance is about a mile and a half by way of Poplar St., Canterbury St., Hyde Park Ave., and Metropolitan Ave.

Int. 50. Why can you not go direct by carriage to this station-house from said lot 35?

Ans. There is no crossing across the R. R. track.

Int. 51. What is the distance of this tract of land from the State house in an air line?

Ans. About 6 miles and ¼.

Int. 52. Describe, respectively, Beach and Poplar Sts., which bound this tract of land; state how long you have known them, etc., generally.

(Objected to and because it is immaterial and unimportant.)

Ans. Poplar St. is about 35 ft. in width in front of this property, of fair average quality as to its road-bed, and Beach St.
150 is 33 ft. in width and is in good condition as a country road, but neither of the two are provided with sidewalks.

Int. 53. How long have they been public highways?

Ans. I can't answer that question.

Int. 54. Why not?

Ans. They were public highways before I was born.

Int. 55. When did the country road called Beach St. acquire that name?

Ans. I can't answer that question.

Int. 56. Why not?

Ans. Simply because my knowledge of ancient history does not enable me to answer it.

Int. 57. How as to Poplar St.?

—. I am as much in the dark in regard to Poplar as Beach, as to when it was named.

Int. 58. Has it been the custom in this vicinity to designate country roads as streets?

(Objected to generally and as unimportant and immaterial.)

Ans. It has, so far as my knowledge goes.

Int. 59. How many houses opposite this Page tract of land are there on Poplar St.?

(Same objection.)

Ans. One.

Int. 60. State where that is situate, its character—that is, its size and general character as a building—and by whom occupied.

151 (Same objection.)

Ans. About opposite Charles St. It is a dwelling-house, occupied by A. W. Hastings; about an average-sized country dwelling.

Int. 61. How as to Beach St.?

(Same objection.)

Ans. There are three opposite the Beach St. line, and I should say they were rather under the average-size country dwelling-house.

Int. 62. State whether or not there is a street leading from Poplar St. toward the station.

Ans. There is a street called Dale St.

Int. 63. From what point opposite this tract of land does Dale St. run?

Ans. From a point about midway as between Beach St. and its N. E. boundary.

Int. 64. How far does Dale St. run from this point?

Ans. It runs from Poplar St. to the Boston and Providence R. R.

Int. 65. Has it been laid out as a public highway through this whole extent?

A. It has not.

Ins. 66. What is the character of the land between Poplar St., opposite this tract of land, and the Boston & Providence R. R.? Describe them generally.

(Objected to as immaterial and unimportant.)

Ans. The land varies in character; quite a large proportion of it is not land.

Int. 67. Give the number of buildings on Dale St., begin-
152 ning with Mr. Hastings' house, and specifying them, one by one, until you reach the Boston & Providence R. R.

(Same objection.)

Ans. On the N. E. side of the street are four dwelling-houses, between Poplar St. and the R. R., and on the S. W. side there is the same number of dwelling-houses. A. W. Hastings lives in the first house; Lindsay Swift in the next; T. B. Moses lives in the third, and John Keggan in the fourth. Then on the other side, coming back, Mrs. Moltar, H. A. Clark, —— Modtieh; I think the name is De Grace.

Int. 68. In what municipality is the Clarendon Hill station?

Ans. Hyde Park.

Int. 69. About how far from the station on Dale St. do you have to go to reach the corporate limits of Boston?

Ans. From 1,000 to 1,200 feet.

Int. 70. For this distance has Dale St. been laid out as a public highway?

(Objected to as not being the best evidence.)

A. It has not.

Int. 71. State whether there was, in October, 1882, or has there since been, any passage-way for carriages through Dale St. and over the Boston and Providence R. R. to the station-house at Clarendon Hills.

Ans. There was no crossing at that time and there is no crossing now.

Int. 72. Why could not carriages cross there?

153 Ans. By reason of a fence on one side and a passenger platform on the other.

Cross-examination by ASA COTTRELL, Esq., of counsel for defendants, Anna Hanbury and Michael Andrew Rorke:

X Int. 73. At what point on Dale St. do I understand that you live—that is, which house, numbering from Clarendon Hill station?

Ans. It is the 2nd house on the right-hand side in going up from the station.

X Int. 74. How far is it, by the way of Dale St., from your house to the lot number 35?

Ans. About 800 feet.

X Int. 75. You stated in your sixth answer that your residence was 1,500 feet from the station at Clarendon Hills, and as you now have stated that it is 800 feet from your house to lot 35, then the distance from the depot, by the way of Dale St., to the property in controversy is 2,300 ft., isn't it?

Ans. The distance from the railroad station I have estimated as the approximate distance, not having measured that with reference to the exact distance as between the two points. I meant to say the distance between the R. R. and my house.

X Int. 76. Do you now mean to qualify your previous statements in regard to these distances; and, if so, will you now fully

154 modify your previous answer on that subject as fully as you wish?

Ans. I have no wish to qualify my previous statements.

X Int. 77. How do you reach the station when you go by carriage—what street or streets do you take to get there—from your house?

Ans. I should take Dale street to Poplar, Poplar to Canterbury, Canterbury to Hyde Park Ave., Hyde Park Ave. to Metropolitan Ave., Metropolitan Ave. to the station.

X Int. 78. Then, you go down and cross the R. R. on Canterbury St., which crossing is farther from the station than lot 35, isn't it?

Ans. I should say it was.

X Int. 79. Is not Dale St. from Poplar St. to the station in a condition for travel with carriages, and do not carriages with passengers go as far as the board fence that you have spoken of, and is there not a passage-way for foot travel through said board fence and across the R. R. to the station which people from Dale St. and Poplar St. are in the habit of using?

Ans. I answer yes to all those questions.

X Int. 80. Do you not yourself with your family go to said station in the way indicated in the last question?

Ans. I do.

X Int. 81. I hear there is a carriage road to said station from said lots, as stated in question No. 79, which will make the distance about 2,300 feet, wouldn't it?

155 Ans. There is not. There is a carriage road from those lots to the railroad, but not to the station by way of Dale St.

X Int. 82. How far is the point on the R. R. referred to in your last answer from the station-house?

Ans. About 125 ft.

X Int. 83. Is the station across the R. R. from Dale St.?

Ans. It is.

X Int. 84. When was this board fence erected which has been spoken of near the railroad, opposite the station-house, and which prevents carriages from driving across the R. R., as you have stated?

Ans. To the best of my recollection, about 2 years ago.

X Int. 85. Whether or not previous to that time carriages crossed the R. R. at that point?

A. They did for a time.

X Int. 86. Did they until the board fence was erected?

Ans. They did.

X Int. 87. Will you say positively that it was as much as two years since carriages were allowed to and were in the constant habit of crossing the R. R. at this point?

Ans. I can't fix the precise date, but if I were to change that statement I should say it was more than two years rather than less.

X Int. 88. Has there been any effort made to have a cross-

156 ing there? And, if so, state what, by whom, and when.

Ans. There has been an effort made to have that crossing opened by residents of that neighborhood on both sides of the track by petition to county and railroad commissioners within two years.

X Int. 89. Did you take part in that effort, and do you know what the result of it was?

Ans. I did take part in that effort, and the county and railroad

commissioners decided that public necessities didn't require a crossing at that point.

X Int. 80. Is it not true that the only necessity for a crossing, so far as reaching the station-house is concerned, is the carrying of passengers from the foot of Dale St. across the R. R. to the station-house, a distance of about 125 ft.?

Ans. It is.

X Int. 91. Then, the only necessity for taking the route around Poplar St., Canterbury Ave., Hyde Park Ave. is to save the passengers going to the station the walk across the R. R., as above stated, isn't it?

Ans. Yes; I agree to that; that is the only necessity.

X Int. 92. What is the general character of the improvements and estates in the neighborhood of the Clarendon Hill station on the N. W. side of the R. R.?

Ans. As a whole, it is a cheap country settlement; there
157 are no expensive houses, no beautiful gardens, and the roads are ordinary country roads.

X Int. 93. How long have you lived in the house on Dale St.?

Ans. 33 years.

X Int. 94. Yours is a pretty good house, isn't it? How many rooms, and what is the value of the estate?

Ans. My house is not, in my judgment, a pretty good house. The value of the estate would depend upon what I include with it, as my house stands in the middle of a three-acre lot. There are 8 rooms.

X Int. 95. The locality is a thrifty one and a good neighborhood, isn't it?

Ans. I should say yes; there is only one pauper in the neighborhood.

X Int. 96. In your answer No. 39 you say lots 47, 45, 41, 40, and 39 are entirely covered with water for about four months, through the fall, winter, and spring. Are those lots covered with water or wet now?

Ans. They are not covered with water, but they are wet—that is, there is no water visible upon the surface.

X Int. 97. When were these lots last covered with water, of your own personal knowledge?

Ans. I can't remember distinctly enough to say positively when I last saw them covered with water.

X Int. 98. Will you testify positively that they were covered with water for 4 months during the last year?

158 A. I will not.

X Int. 99. Will you testify that they were covered with water for 4 months in the fall, winter, and spring of 1881 and 1882, of your own knowledge?

Ans. I will not.

X Int. 100. Do you do business as a real estate agent; and, if so, how long have you been engaged in that busines?

Ans. I do to some extent do business as a real estate agent—to some extent for 30 years.

X Int. 101. What property have you in your hands for sale, consisting of building lots located in the neighborhood of the lots in controversy, if any?

Ans. I have on Dale street 5½ acres of building land, divided into house lots, which I have had in my hands as an agent and for sale for 30 years.

(Mr. Cottrell interrupted the witness after he had completed his answer to and including the words "and for sale," and objected to any further answer, on the ground that his question was already answered, but the examiner allowed the witness to complete his answer, as it appears above, by adding the words "for 30 years.")

X Int. 102. When were you first approached to give evidence in this case, and where and by whom?

Ans. Last Friday, near my home, by Mr. Hill, counsel for complainant.

159 X Int. 103. Whether you went to the premises with him and viewed and pointed them out to him, and whether you have made any surveys or measurements of the property since last Friday.

Ans. I did go to the premises with Mr. Hill and viewed them, but had made no surveys with reference to it.

X Int. 104. Whether or not you provided him with memorandums from which to ask you questions in this examination.

Ans. I have not.

X Int. 105. Didn't you tell him which lots you should say were wet and which lots were covered with water in the fall, winter, and spring?

Ans. I think I did.

X Int. 106. Didn't he take it down on paper at the time, or did you give him a memorandum of the same?

Ans. I have no recollection of seeing him use pencil or paper or make any memorandum, nor did I take or make any notes with reference to it.

X Int. 107. He had here to-day, hadn't he, lists of the lots which you had told him were wet and covered with water, and also lists of the lots that you designated as too uneven for building purposes?

Ans. I don't know what Mr. Hill had of that nature.

X Int. 108. Did you tell him on Friday what prices you should fix on the several lots in controversy?

160 Ans. I did not.

X Int. 109. Did he ask you?

Ans. I don't remember that he did; I think not.

X Int. 110. Didn't you have any conversation about your valuation of them before you came here to testify?

Ans. I did.

X Int. 111. Didn't you tell him what you should say on that subject?

Ans. I have no recollection that he asked me what I should say or that I told him what I should say.

X Int. 112. Did you take him or go with him to the station when he returned to Boston?

Ans. I did not.

X Int. 113. Will you testify that any one of the lots in controversy is fifty feet higher on the rear line than on the front line?

Ans. No.

X Int. 114. Will you testify that any one of them is forty feet higher on the rear line than on the front?

Ans. To the best of my belief, there are several of them that are more than that.

X Int. 115. Will you testify that any of them are thirty feet higher on the rear line than on the front? And, if yea, state which ones.

Ans. Yea; lots 78, 79, & 80.

(Adjourned.)

161 AUG. 9, 1883.

X Int. 116. In answer No. 24 you say these lots are used for the purposes of husbandry; please state whether they or either of them have been plowed within the last 10 years; and, if yea, when?

Ans. To the best of my recollection about 2 acres in the N. W. cor. of the tract have been cultivated or plowed within ten years.

X Int. 117. Can you testify that any of the lots constituting the 27 in controversy have been plowed within 10 years? And if you shall answer yea, then state which ones, and when and by whom.

Ans. No; I can't testify; I can't answer yea to those questions.

X Int. 118. Who is Heuck referred to in answer 27, and what was his business in 1872, and where is he now, if you know?

Ans. I had no personal acquaintance or knowledge of Heuck; by hearsay at the date of this plan he was a young graduate of our school of tectnology, and about this date he started business as a land surveyor. This is the only plan I ever saw made by him. I don't know where he is; he is not about here, to my knowledge.

X Int. 119. How long has Dale St. been used as a public way from your house to the R. R. at Clarendon Hill station?

Ans. About 36 years.

X Int. 120. And has said Dale St. been a public way from
162 your house to Poplar St. for the same period?

A. I answer yes.

X Int. 121. Will you examine the plan shown you, purporting to be a plan of the lands in Boston and Hyde Park belonging to the Metropolitan Land Co., and state whether said plan correctly represents the location of the Boston and Providence R. R., the streets adjacent thereto, the station at Clarendon Hills, and the termination of Dale St. at the R. R.?

Ans. I never had occasion to verify this map by actual measurements, but I have no reason to doubt its general accuracy.

(Counsel for def't- offers the said map in evidence, marked Exhibit "B." Counsel for compl't objects to the said map as evidence, because the same is incompetent.)

(Here follows map marked p. 163.)

164 X Int. 122. Please examine said plan, Exhibit "B," and state if the original Page estate which you speak of in your direct testimony is indicated by pencil lines on the paper and south-westerly margin of said plan; and, if so, please mark it with ink and indicate it by placing upon it the words "Page estate."

Ans. It is approximately. I have marked it "Page estate" and indicated thereon lot 35.

Redirect by Mr. HILL:

X Int. 123. With reference to Exhibit "B" I notice that the streets Dale, Mansur, and Metropolitan Ave. are indicated as crossing the R. R. How is it, in fact, with regard to crossings at the points mentioned?

Ans. Neither of those streets cross the R. R. The only actual crossing of the railroad is at Canterbury street.

X Int. 124. Do you know or can you state any further matter or thing which may be of benefit or advantage touching the subject-matter of this your examination to either of the parties? If yea, state the same fully and at length in your answer.

Ans. I know of nothing further.

THEODORE B. MOSES.

Attest: JOHN G. STETSON, *Examiner.*

165 *Deposition of Benjamin Cushing.*

BOSTON, MASS., *Aug.* 9, 1883.

Direct examination by EDWARD J. HILL, Esq., of counsel *of* complainant:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Benjamin Cushing; 58; Boston, Mass.; assessor of taxes for the city of Boston.

Int. 2. How long have you been an assessor?

Ans. 18 years.

Int. 3. Emily Hoyt, of Stamford, Ct., is the complainant in this suit. State whether you know her.

Ans. I do not.

Int. 4. Mrs. Anna Hanbury is one of the defendants named herein. State whether you know her; and, if so, where, when, and under what circumstances you first met her.

Ans. My memorandum gives the date.

(So much of the answer is objected to by def'ts' counsel.)

Memorandum handed to witness by Mr. Hill, compl't's counsel, and question reread to the witness.

Ans. I do know her. I first met her at the assessors' office, city hall, Boston, August 3, 1880, at which time she made an application for abatement of taxes.

Int. 5. Upon what property was this application made?

166 Describe the property, as near as you can.

(Objected to as incompetent, unimportant, and immaterial.)

Ans. Upon real estate situated in West Roxbury district, 27 lots, as shown by a plan on file in our office.

Int. 6. State whether or not you have caused to be made a copy of that plan.

(Same objection.)

Ans. I have.

Int. 7. Please examine the paper which I now hand you, marked Exhibit A, Moses, and state of what the same is, if you know, a copy.

(Same objection.)

Ans. This is the copy of the plan on record.

Int. 8. State whether you have compared the copy, Exhibit A, with the original record, and whether or not it be a true and correct copy.

(Same objection.)

Ans. I have, and it is.

Int. 9. With this plan before you please describe the property upon which the application for abatement of taxes aforesaid was made, specifying the numbers of the lots, if you can.

(Same objection.)

Ans. Lots 69, 73, 77, 78, 79, 80, 55, 56, 58, 60, & 63, on Charles St.; lot 35, corner of Poplar and James St-.; lots 39, 40, 41, 45, 47, 23, 24, 27, 28, & 29, on James St.; lot 1, corner of Poplar and Beach
167 St-.; lots 8, 9, 12, and 13, on Beach St.

Int. 10. For what year and for what taxes and their amount was this application made?

(Same objection.)

Ans. The year 1879, amounting to $33.75.

Int. 11. State, if you please, how the application was made, whether orally or in writing.

(Same objection.)

A. Orally.

Int. 12. State, as near as you can remember, the grounds of the application, and, as near as you can remember, in the exact language of Mrs. Handbury upon that occasion.

(Same objection, and specially that the question is irregular and illegal.)

Ans. She stated that it was heavily mortgaged; that she was a widow, and in poor health.

Int. 13. What was said, if anything, concerning her pecuniary ability to pay the said taxes?

(Same objection as to last question.)

Ans. I don't remember any conversation with her that would

bring forth anything except the fact that was recorded and warranted the abatement.

(The answer after the word her objected to.)

Int. 14. What fact do you refer to as having been recorded?

(Same objection as last.)

168 Ans. The reasons for abatement.

Int. 15. Can you state what that record is? If so, please give the copy thereof.

(Objected to.)

Ans. I have stated in my previous answer.

(Answer objected to by Mr. Cottrell.)

Int. 16. State whether other, and, if so, what, taxes against Mrs. Hanbury on these lands have been abated, and on what ground.

(Same objection.)

Ans. Taxes for 1880, amounting to $41.04, and of 1881, amounting to $38.92; that of 1880, on account of being a widow, sick, with three children, and heavily mortgaged, and that of 1881, taxes of 1881, in consequence of being a poor seamstress, sick, and heavily mortgaged.

Int. 17. State whether or not you know of your own knowledge the situation and condition of these lots.

Ans. I do.

Int. 18. How near to them do you reside, and how long have you resided there?

Ans. About 5 miles; about 7 years.

Int. 19. Have you been upon the tract of land embraced in the plat represented by the said Exhibit A; and, if so, when, as near as you can remember?

Ans. I have been on the land at the time of the annexation of West Roxbury district with Boston, about January, 1874, and several times since without recalling the dates.

169 Int. 20. What are the general features of this tract of land, whether high and dry or low and wet? Please state generally.

(Objected to.)

Ans. Part of the land is high and dry and part low and wet, forming sort of a basin; so wet that my colleague who was with me in the winter of 1874 wet his feet when the thermometer was about 15° above zero.

Int. 21. What has been the assessed valuation of these lots, say, for the last four years, respectively?

(Objected to.)

Ans. The assessed valuation has been $100 per lot.

Int. 22. Has there been any change in the assessed valuation of any of the lots for any of the said years?

Ans. There has not.

Int. 23. Why is there such a uniformity for so long a period?

Ans. Because the assessors in their judgment think it is all that they are worth.

(Answer objected to.)

Int. 24. What is the lowest valuation, as a general rule, placed upon lots laid out and platted for city lots, or for house lots, or for building purposes in the assessment of real property for the purposes of taxation through your office?

(Objected to.)

Ans. The fair *an* equitable cash market value.

170 (Answer objected to.)

Int. 25. In the assessment of lots in subdivisions do you, as a rule, place their value below one hundred dollars where the value would be actually less than that sum?

(Objected to.)

Ans. We should sweep several lots together to make that sum.

(Ans. objected to.)

Int. 26. Do you know any other or further fact touching the subject-matter of this your examination which may be of benefit or advantage to the plaintiff?

Ans. Not knowing what would be the advantage of the plaintiff I cannot state.

Cross-examination by ASA COTTRELL, Esq., of counsel for defendants:

X Int. 27. How many different times did you see Mrs. Hanbury in regard to the taxes on these lots? State when you saw her the first time and whether that was the first application that had been made for an abatement of the taxes on said lots in her behalf.

Ans. Once certain, and my impression is twice. August 3, 1880, was the first time I saw her, and, if my memory is right, I saw her August 13, 1881. August 3, 1880, was the first application. I think my answer covers that.

171 X Int. 28. Do you mean to say that her personal application August 3, 1880, was the first application made to the assessors by or on behalf of Mrs. Hanbury in regard to the taxes on these lots?

Ans. It is the first that ever came to my knowledge.

X Int. 29. Had not some application been made to the assessors by some one in her behalf before she applied to you, and were you not expecting her to call in regard to the matter of the abatement of these taxes?

Ans. There might have been, but not to my recollection, as we have hundreds of applications during the abatement season.

X Int. 30. Didn't Mrs. Hanbury bring with her a letter of intro-

duction from a gentleman in official position when you saw — the first time you have mentioned?

Ans. She might have without my remembering it, as we do not care so much for introductory letters as we do to get at the main facts in matters of abatement.

X Int. 31. Did she not tell you that the party referred to in the last question as sending the letter of introduction had sent her to your office to satisfy her it would be all right?

Ans. I don't remember.

X Int. 32. Were you not, in fact, informed that Mrs. Hanbury had fallen down-stairs and broken a limb, which made her expenses at the time very large?

Ans. I don't remember.

172 X Int. 33. Was not Mrs. Hanbury very lame at the time of this first interview?

Ans. My impression is that she was.

X Int. 34. Did she not tell you at that interview of Aug. 3 1880, that she should have been there before but for severe indisposition?

Ans. I do not remember, as we have hundreds of such excuses during the abatement season.

X Int. 35. When Mrs. Hanbury called on said Aug. 3 did she not tell you her name and state why she hadn't called before, and did you not take her tax bill and say to her it is all right; that her friend had attended to it, and did you not then put the tax bill in the desk?

Ans. It would be my usual course, but I do not remember this particular instance.

X Int. 36. Have you answered the last question as fully as you can?

Ans. I have.

X Int. 37. Then do I understand that ques. 35 and the answer to it indicate and express all that you remember of what occurred on the 3 of Aug., 1880?

Ans. You are to so understand.

X Int. 38. You say in one of your answers in the direct examination that if your memory is correct you also saw Mrs. Hanbury Aug. 13, 1881, in regard to the abatement of the taxes on

173 said estate. How certain are you that you had such interview, and where was it, if you had it, and what was said by her to you and what did you say to her?

Ans. My impression was at the time of answering the question referred to that I had seen her twice on the subject of the three several abatements. I know that one of the abatements was made on the personal application of a friend of hers (Mrs. Hanbury's). There might have been two abatements made on application of her friends and only one of the three upon her personal application. If any at the assessors' office, the conversation I do not remember.

X Int. 39. You have stated in the direct examination that the application for the abatement for the year 1879 was made orally. To whom was it made, and will you testify that it was made to you, or that either of the applications relating to the three years were made

to you personally or in your presence except the application of Aug. 3, 1880, referred to in your previous answers?

Ans. All the applications were made to me.

X Int. 40. Can you testify that the representation that the property was heavily mortgaged was made by Mrs. Hanbury to you?

Ans. My record book would indicate it and my recollection also.

174 X Int. 41. There were representations made to you by a friend or friends of Mrs. Hanbury before she came to see you, were there not; and have you any record distinctively showing what representations were made by him or them and what were personally made by Mrs. Hanbury?

Ans. I have no recollection of any information previous to her application. My first record of the abatement of 1879's tax, I think, was based upon Mrs. Hanbury's representation; the abatements of 1880 and 1881, I think, upon representations of her friend. I am positive of that of 1881, but not so positive of that of 1880. My records show the reasons for abatement, but not by whom made. The law requires that we shall keep a record of the reasons of abatement.

X Int. 42. You have given the amount of the assessment of taxes on this property for the year 1879. Had not the assessments on said property previous to that year been much higher? And, if you know, state what the assessed taxation was from 1874 to 1879.

(Objected to as not a proper subject of cross-examination.)

Ans. They may have been; I cannot tell without reference to the records.

X Int. 43. Is it not the practice of the assessors of Boston to assess at a very low valuation vacant and unproductive lands?

175 Ans. No, sir; we are under oath to assess at a fair market value. Vacant lands may be of small value, but not low for the kind.

X Int. 44. Haven't you, during your term, frequently known vacant lands to be *bona fide* sold for double assessed valuation?

Ans. I don't recall any instance.

X Int. 45. Without recalling any instance don't you know that it is true that vacant lands in the city of Boston, and especially in what is known as the Back Bay, have frequently been sold—sold to *bona fide* purchasers—for double the assessors' valuation?

Ans. Not in the year for which they were assessed. I have known people to ask double the assessment when the city wanted to purchase, and when the city concluded not to buy the owners to grumble at our assessment.

(All parts of witness' answer after first sentence is objected to by def'ts' counsel.)

X Int. 46. Has it not been, during your service as assessor or at some periods of said service, a common thing for vacant lands in the city of Boston to be sold to *bona fide* purchasers for two and three times the assessors' valuation?

Ans. Not a common thing; it would be the exception.

X Int. 47. Were there not a good many instances of that kind in the sale of Back Bay vacant land?

176 Ans. Not for the equivalent in money.

X Int. 48. What do you mean by that?

Ans. I mean that there are many instances where land has been sold for a small cash payment and the balance on long mortgages.

BENJ. CUSHING.

Attest: JOHN G. STETSON, *Examiner.*

177 Evidence for defendants, Anna Hanbury and Michael Andrew Rorke, taken pursuant to the sixty-seventh rule of the Supreme Court of the United States in equity, as amended, before me, John G. Stetson, examiner.

Present: Asa Cottrell, Esq., of counsel for defendants, Anna Hanbury and Michael Andrew Rorke; Charles S. Hanks, Esq., of counsel for complainant; Miner N. Knowlton, one of the defendants.

Deposition of Albert J. Bamford.

BOSTON, *Sept.* 5, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants, Hanbury and Rorke:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Albert J. Bamford; 46; 124 West Concord St., Boston; real estate agent.

Int. 2. How long have you been a real estate agent, and where has been your place of business—in what localities have your business operations been principally enacted?

Ans. About 16 years; four different locations; two on State St.; was — 60 State St.; then from there to 31 Washington St.—old number, 9 State St.; I was a short time in the old State house; then 19 Milk street is my present office. I have sold in all parts of the city and suburbs.

Int. 3. Whether you are acquainted with Anna Hanbury and Miner N. Knowlton, two of the defendants named in this

178 suit; and if yea, then state how long you have been acquainted with them or either of them.

Ans. I have been acquainted with Anna Hanbury between three and four years; with Mr. Knowlton less than a year.

Int. 4. When and where did you first meet Mr. Knowlton?

Ans. He called at my office, 19 Milk St., about the 1st of Oct., 1882.

Int. 5. Please state all that occurred at that time—all that was said and all that was done.

Ans. He brought a letter of introduction from Mrs. Hanbury, and in that letter Mrs. Hanbury stated that she had sold to Mr. Knowlton her land at Clarendon Hills. I made arrangements with Mr. Knowlton to take him out to the land in my carriage. By appointment he met me the next day. I drove him to the land; showed him the lots by the plan he had and the surroundings. We stopped

there nearly one hour looking at the land. He expressed himself as very favorably impressed with the land. He said that the land ought to be worth more than I said it was, as land in Chicago would be worth more the same distance from the center. Either then or on the way back I asked him how he traded for the land, not seeing it. He said he formed his judgment by taking a map of Boston and seeing the distance the land was from the centre and the R.
179 R. communications, and compared it with what land was worth in Chicago at the same distance. He came to the conclusion that as land in Chicago was worth from 15 to 25c. this certainly ought to be worth 10c. a foot, if not more. That is the substance of that interview at the time.

Int. 6. Did you go in a carriage to the premises with Mr. Knowlon, and state whether or not you drove from the depot at Clarendon Hills to the premises or from the premises to said depot; and will you state specifically the route of your drive on that occasion from starting to your return?

Ans. Yes; I did take him in the carriage. We did not drive to the station of Clarendon Hills. We drove within sight of the station. I went over the mill-dam into Longwood, Jamaica Plains, and from there to Clarendon Hills. On my return I came through Washington St.—that is, part way. I branched off; well, I may or may not. In regard to the branching off, it is from the street that leads from the top of the hill to Washington St.

Int. 7. About how near to the Clarendon Hill station did you drive, and why didn't you drive to the station?

Ans. About 1,200 feet from the station; Mr. Knowlton did not want to go to the station.

(Objected to on account of being not competent evidence.)

180 Int. 8. What did Mr. Knowlton say in regard to going to the station?

Ans. He wanted to see how far the station was from the land. As soon as we were within about 1,200 feet of the station he said that was as far as he wanted to go, and said that was within easy walking distance of the land.

(Objected to, the first part of the answer, for the same reason.)

Int. 9. Please state any other conversation which you can recall which occurred during said ride which you have not already narrated in previous answers.

Ans. He wanted to know what I thought would be the best way of disposing of the said lots. I told him to have some large signs painted and put upon the land, and by judicious advertising there was no doubt but what he could sell the lots the coming spring. He said he would have it done and would make arrangements with me in regard to it. He expressed no dissatisfaction with the exchange and expressed himself that the property would increase more in value than his property in Chicago. He also stated that he could not have made the trade if Mrs. Hanbury had not been in need of funds.

Int. 10. Whether or not at any time you had any conversation with Mr. Knowlton in regard to the incumbrance on the Clarendon Hill lots; and if you shall answer yea, then state when and where such conversation occurred, and state fully all that was said and done at that time.

181 Ans. Yes; most of the conversation was at my office, 19 Milk St. He told me he had come prepared to pay off all incumbrances upon the property, and wanted me to notify the mortgagee to meet him at my office. He met the mortgagee there and tendered them a R. R. bond in payment of their mortgage. They did not wish to take the bond. At his request I took the bond to my bankers to see if I could get it cashed. As the bond was not listed in this market it would have to be sent to New York. I so reported to him on my return. He then said that he was going to N. Y. in a few days and would send me the money to pay the mortgage. I had the mortgagee execute a discharge of said mortgage, and had them leave it at their bankers. When the funds came from N. Y. I was to pay the money into the bank and get the discharge and put it on record It remained there about a week, until I heard that he was not going to pay it at present. He wrote that a man in Connecticut would take it if the mortgagee would assign it.

Int. 11. Who was the mortgagee in the mortgage referred to, and who do you mean by "they," in speaking of your interviews with the mortgagee and Mr. Knowlton?

Ans. Margaret P. Fales was the mortgagee, and they meant herself and husband, the Rev. Mr. Fales.

Int. 12. Were Rev. Mr. Fales and Mrs. Fales or either of
182 them present at any of the interviews described in the last answer; and, if yea (if not both, then which), *and* state what occurred in their presence, if anything?

Ans. My impression is that both were present. What occurred is in my previous answer.

Int. 13. How soon before he (Mr. Knowlton) went away from Boston to go to New York did you see him, and please state where and what occurred at that time?

Ans. I think he called in the afternoon and stated that he was going that night, and that I would hear from him in two days—that is, he would send the draft in two days. He thanked me for my kindness in showing him the land, and hoped that I would come to Chicago and he would return some of the kindnesses.

Int. 14. At whose request or suggestion was the discharge of the mortgage made, as you have stated, and to whom did the discharge and release run, and where, if you know, is that discharge now?

Ans. I should say Mr. Knowlton's, and it was made to him, as it was to be paid by him. I do not know where the discharge is now.

Int. 15. Whether or not you are familiar with the location known as Clarendon Hills; and, if yea, for how long, and whether you are acquainted with the value of land in that neighborhood.

Ans. Yes; I should say about 11 years. I am.

183 Int. 16. State the value of these lots, and if the value wa different from what it is at present, then state what their value was in September, 1882.

Ans. They were worth, a year ago, about 5 or 10c. per foot. At the present time I should say they were worth from 6 to 12c. per foot.

Int. 17. When did you last observe them?

Ans. June, 1883.

Int. 18. Whether or not, at any time when you have seen these lots, they or any part of them, or, if any, what ones and what parts of them, were covered by water.

Ans. I never saw any water on them.

Int. 19. What is the fact in regard to the depression or elevation of these lots or any of them as affecting their utility for building purposes?

Ans. They are all available for building purposes.

Int. 20. Please describe the streets called Charles & James, as shown on plan marked "Exhibit A, Moses," in the testimony of Mr. Moses in this case.

Ans. Both of them have been partially graded, so you can see where the street is laid out.

Int. 21. Do you know anything about the value of gravel in this locality? And, if so, state what you know about it, and what means you have of knowing in regard to the subject.

(Objected to as incompetent.)

Ans. I cannot give the value of it in dollars and cents.

184 Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 22. How long have you been located in your present office, 19 Milk St.?

Ans. Two years and one month.

X Int. 23. How long were you located at old State house, and why did you leave there for your present location?

Ans. About one year. The reason I left was the city took possession. They notified all tenants to leave.

X Int. 24. Does not the city now lease portions of the building as formerly?

Ans. It does lease two R. R. offices; the upper portion is Memorial Hall; that is where my office was formerly.

X Int. 25. Are there not now offices to let in that building?

Ans. Not to my knowledge.

X Int. 26. How long were you located at 9 State St., and why did you leave there for your office in the old State house?

Ans. About 9 years. I left because they were to tear the building down.

X Int. 27. During this period have you been engaged in any other occupation than that of real estate broker, and what?

Ans. No, sir.

X Int. 28. Do you ever loan money in connection with your other business?

Ans. Yes, sir.

X Int. 29. Do you make that a part of your business?

185 Ans. I do.

X Int. 30. What rate of interest are you accustomed to charge?

(Objected to as immaterial and incompetent.)

Ans. Six per cent. per annum on first mortgages.

X Int. 31. How much on other securities? And specify.

(Same objection.)

Ans. It depend- on the securities. I should say from 8% per annum to 2 per cent. per month.

X Int. 32. Have you ever charged a higher rate of interest than two per cent. per month, and to whom?

(Objected to.)

Ans. For small sums, eight or ten years ago.

X Int. 33. Have you ever charged a higher rate of interest than 2% per month within the last five years?

(Objected to.)

Ans. I do not think I have. I do not recollect.

X Int. 34. Have you ever loaned Mrs. Hanbury any money?

Ans. No, sir.

X Int. 35. Will you please explain the transfer of the mortgage on the Clarendon Hills property now in litigation to Mrs. Fales?

Ans. The mortgage was held by a Mrs. Cheever, and it was due, and she wanted her money. At Mrs. Hanbury's request I had
186 the mortgage assigned to Mrs. Fales.

X Int. 36. For how much was the mortgage?

Ans. For $800.

X Int. 37. What is Mrs. Cheever's full name and residence?

Ans. I think it is Susan E. Chever. It may be Chelsea or Boston; I don't know which.

X Int. 38. Did you consider the security good?

Ans. Perfectly so.

X Int. 39. What rate of interest was to be paid on the mortgage?

Ans. Seven (7) per cent.

X Int. 40. Does the face of the mortgage show seven per cent.?

Ans. It shows a higher percentage.

X Int. 41. Have you had any other business transactions of any sort with Mrs. Hanbury except in relation to the above mortgage?

Ans. No, sir.

X Int. 42. Have you ever collected money for Mrs. Hanbury?

Ans. About $30 for the use of the land at Clarendon Hills.

X Int. 43. For how long was the land rented for which you received the above $30?

Ans. Two years—the years 1881 & 1882.

X Int. 44. For what was it used by the lessee?

Ans. He cut the grass off from it and then pastured his horses in the fall.

187 X Int. 45. Who was it?

Ans. I can't think of his name. He was the Hyde Park expressman. His name was Corson.

X Int. 46. Did you ever try to let the land to any other party?

Ans. I had an application from another party for more money, but I should have to be to the expense of some fencing, so I let Mr. Corson have it.

X Int. 47. Who is this other party?

Ans. I don't remember whether this party was MacDonald or Donald. I did not ask him his residence.

X Int. 48. Did you know the man personally?

Ans. I did not.

X Int. 49. How much did he offer you?

Ans. Twenty dollars.

X Int. 50. When did Mrs. Hanbury give you the charge of this property?

Ans. About three years ago.

X Int. 51. For what purpose?

Ans. To sell or exchange it.

X Int. 52. From whom have you had offers to buy? State amount named and address.

(Objected to as above.)

Ans. Only in the way of exchange have I had any offers. I cannot recall just now any person's name in particular.

— Int. 53. Would your books show it?

Ans. No, sir.

— Int. 54. Have you any papers or memoranda that would show it?

188 Ans. No, sir.

X Int. 55. Did you act in any way for Mrs. Hanbury before the time she gave you this property to sell?

Ans. No, sir.

X Int. 56. Did you know her before this time?

Ans. I do not think I did.

X Int. 57. Did Mrs. Hanbury ever tell you that she tried to sell this property at auction or did you in any way know of such fact? And, if so, state the same fully.

Ans. She told me she tried to sell it, but the prices were not satisfactory and she withdrew it from sale, trying a few lots.

X Int. 58. What do you mean by saying "she withdrew it?"

Ans. The price bid for the lots was not what she considered them worth and she would not sacrifice the lots.

X Int. 59. How do you know this?

—. She told me so.

X Int. 60. Did she tell you that there was to be a sale by the auctioneer, limited to a certain price?

Ans. I have no recollection.

X Int. 61. What did she tell you after the time of sale in reference to this attempted sale?

Ans. She said it was not a success and she would not sell her

land unless she could get a fair price for it; she would keep it first.

189 X Int. 62. You understood from Mrs. Hanbury that no sale had been made by the auctioneer?

Ans. I did.

X Int. 63. As far as you know, were proper steps taken to sell this property by the auctioneer or otherwise?

Ans. I do not think it was advertised sufficiently. I did not see it.

X Int. 64. Did you look for the advertisement?

Ans. I generally scan all the auction sales that are advertised in the papers.

X Int. 65. Did you look particularly for this?

Ans. I did not.

X Int. 66. I do not understand you to say that it was not advertised properly?

Ans. I did not see the advertisement. I did not know anything about it, and consequently did not know whether it was properly advertised or not.

X Int. 67. This was before you had anything to do with the property yourself?

Ans. I think it was.

X Int. 68. Do you know of the property being in any one's else hands to sell about this time from Mrs. Hanbury or others?

Ans. Mrs. Hanbury informed me that Albert Gates, Jr., had it.

X Int. 69. For how long a time?

Ans. Since she owned it.

X Int. 70. Did Albert Gates, Jr., ever try to sell or exchange it, to your knowledge, through Mrs. Hanbury?

190 Ans. I do not know.

X Int. 71. What did you tell Mr. Knowlton was done with the $30 received as rent?

Ans. Applied to paying the interest on the mortgage.

X Int. 72. Did Mrs. Hanbury generally have sufficient funds to pay the interests as they became due?

Ans. Not always promptly at the very day it was due.

X Int. 73. Did she have sufficient money always in a few days to pay the interest?

Ans. Not always.

X Int. 74. How was the interest paid in such cases?

Ans. I advanced the money and waited for her to send it to me.

X Int. 75. How soon did she generally send it?

Ans. I cannot tell just the time; about 30 or 60 days until the last 6 months.

X Int. 76. How long have you ever waited before the money came from Mrs. Hanbury?

Ans. I cannot tell just the exact time; perhaps within 60 days.

X Int. 77. Will your books show it?

Ans. I do not know; they might and they might not.

(The request was made by counsel for plaintiff that Mr. Bamford or his counsel produce books referred to in question & answer 77.)

191 X Int. 78. In answer to X int. 75 what do you mean by the expression "the last 6 months?"

Ans. It is my impression. I do not state positively that it ran about three months.

(Adjourned.)

SEPT. 6, 1883.

Witness states as follows:

Since the adjournment I have looked for the books and papers asked for in cross-int. 77 to refresh my memory, but I have not found anything. If I had any books or papers I have destroyed them.

X Int. 79. Will you please produce any papers, letters, or memoranda received by you from Mrs. Hanbury or any memoranda made by you concerning the matter in litigation?

(Objected to.)

Ans. I will do so if I have any. I will look for them this noon and produce them this afternoon.

X Int. 80. While you were acting as agent for Mrs. Hanbury was there any agreement as to what commission you was to receive if you sold the Clarendon Hill property?

(Objected to.)

Ans. No, sir; no special agreement.

X Int. 81. Did you intend to charge her for the sale of said property?

(Objected to.)

—. Certainly I did if I made the sale at the regular rate.

X Int. 82. What is your rate?

Ans. Two and one-half per cent.

192 X Int. 83. Did you ever offer to sell the property to a Mr. Page; and, if so, at what price?

(Objected to.)

Ans. I did. I did not offer it to him for less than $10,000, and told him then that Mrs. Hanbury held it at higher figures, but I would submit any reasonable offer that he would make.

X Int. 84. Did you ever offer it for sale for about $2,000?

(Objected to.)

Ans. No, sir.

— Int. 85. What would you give for the property as an investment?

(Objected to.)

Ans. I have not the money to invest in vacant lands.

X Int. 86. Do you think it a profitable investment to one who would give $2,000 for it; and, if so, who?

(Objected to.)

Ans. It would be, decidedly.

X Int. 87. For how much do you think you could put it on the market to-day?

(Objected to.)

Ans. That would depend upon how it was offered—in lots or the whole.

X Int. 88. How much for the whole?

Ans. That would depend upon the customer. Some would not give more than 5 and others give $1,000.

X Int. 89. What rate of interest in your business of money-
193 loaner do you charge on money loaned on first mortgages on vacant land?

Ans. I loan from 6 to 7%; it depends on the sum and the security.

X Int. 90. Do you, then, change your answer to X interrogatory 30?

Ans. X int. 30—I had reference to improved property.

X Int. 91. Is a greater rate than 7% high?

Ans. Yes.

X Int. 92. When you advanced money for Mrs. Hanbury did you have any security from her?

Ans. I did not.

X Int. 93. Have you ever sold any building lots on Clarendon Hills; if so, to whom, and what prices, and when?

—. I have not.

X Int. 94. How near to the present property have you sold lots; to whom, at what price, and when and where?

Ans. Within about ¾ of a mile, from 6½ to 8½ cts. per foot. It was sold at auction at my order to Michael Quigley and Mr. Morton. It was a year ago last July—on Florence St. Those are the only lots I sold in that vicinity. They were forced sales, under the hammer.

X Int. 95. How near a R. R. station were they?

Ans. 1,500 to 2,000 feet.

X Int. 96. On which side of the Boston & Providence R. R. track are these lots?

194 Ans. I think they are on the right. They were on the George Freemantle estate, on Florence St.

X Int. 97. If, as a fact, Florence St. does not extend to the right of the B. & P. R. R. track, are these lots on the left-hand side of the R. R.?

Ans. No, sir; they are on the right.

X Int. 98. Then are you sure that they are on Florence St.?

Ans. Yes, sir.

X Int. 99. Will you mark on the map marked Exhibit "C" where these lots are situated?

(Objected to because Exhibit "C" has not been offered in evidence and because respondents — to Exhibit C being received in evidence.)

(Question withdrawn.)

(A map, marked "Exhibit C, Bamford," is offered in evidence.)

(Here follows map marked p. 195.)

196 (Objected to because incompetent evidence and for want of identity and verification.)

X Int. 100. Will you mark upon the map marked "Exhibit C, Bamford," in ink where these lots are situated?

Ans. I have marked it.

X Int. 101. How many houses, in your judgment, are situated within 1,500 feet of this estate?

(Objected to.)

Ans. One way from Mt. Hope station, on Florence St., 4; now, from Roslindale station, 20 or 30.

X Int. 102. Is not the land conveniently near to two different railroad stations?

Ans. About 7 minutes' walk from 2 stations.

X Int. 103. Please give the topography of the land.

(Objected to as immaterial and irrelevant and instituting an important inquiry.)

Ans. Two of the lots are much lower than the street; the other two are high in front, slopes at the back.

X Int. 104. Are the low lots lower than any of the lots on the Clarendon Hill property?

(Same objection.)

Ans. No, sir.

X Int. 105. Do any of the lots have a greater slope than any — the Clarendon Hill lots?

(Same objection.)

197 Ans. They do not.

X Int. 106. Is the territory in the vicinity of these Florence-St. lots sparse or settled?

(Same objection, and respondents' counsel protests against the continuance of an apparently unimportant inquiry.)

Ans. It is not thickly settled.

X Int. 107. At what hour did Mr. Knowlton call on you the day you drove him out to the Clarendon Hills property?

Ans. I think it was about 2.30 or 3 p. m.

X Int. 108. What time did you leave your office with him?

Ans. About that time.

X Int. 109. How long did it take you to get to your stable?

Ans. About 20 minutes.

X Int. 110. How long before your carriage was ready for you?

Ans. About 5 or 8 minutes.

X Int. 111. Through what streets did you drive? Answer explicitly.

(Objected to as having once been answered fully.)

Ans. Well, I went through West Canton, Columbus Ave., West Chester Park, Beacon St.; from Beacon St. (called Milldam) down Harboard St. to Pond St.; then through Orchard St. to Centre St.; then South St., I should say, up Hyde Park Ave., to the Clarendon Hill station, and then turned and came back onto Canterbury St.; from Canterbury St. to Poplar St., which led to the lots of
198 land. We stopped at the junction of Hyde Park Ave. & Metropolitan Ave. before we went up to the land. We went through Poplar to Washington St. on our return.

X Int. 112. Did you go any nearer the station than the junction of Hyde Park and Metropolitan Ave.?

Ans. I do not think I did.

X Int. 113. Do you call that going to the depot?

Ans. To all intents and purposes it was, for we only wanted to see where it was located.

X Int. 114. In your drive out to this property did you take the most direct route?

Ans. I did not.

X Int. 115. Did you stop anywhere on your way out?

Ans. I might have stopped on Orchard St. to collect some rents.

X Int. 116. How long?

Ans. Inside of 10 minutes.

X Int. 117. How long did you wait at the junction of Hyde Park Ave. & Metropolitan Ave.?

Ans. From 3 to 5 minutes.

X Int. 118. How long did it take you to drive to the land from there?

Ans. About 5 minutes.

X Int. 119. Did either of you get out of the carriage at the land?

Ans. I do not think we did, as we could drive all around it and there was no necessity of our getting out.

199 X Int. 120. Were the lamps—street lamps—lit while you were there?

Ans. I did not notice any. There was in the city on our return. It was about dusk when we left.

X Int. 121. How near the station did you drive after you left the Clarendon Hill property?

—. About 1,200 feet.

X Int. 122. What street was it on?

Ans. Metropolitan Ave.?

X Int. 123. What is Mr. Benjamin Cushing's reputation for truth and veracity?

(Objected to.)

Ans. I never had any dealing with him. I am no judge of his veracity.

X Int. 124. Are you acquainted with Mr. Theodore B. Moses, surveyor?

Ans. I am not.

X Int. 125. Will you please state the topography of this Clarendon Hill property?

Ans. Part of them are what we would call side-hill lots, high, and part of them are on level land.

X Int. 126. What is the elevation of the side-hill lots from front to rear?

Ans. I cannot answer that question in feet. On a few of the lots, say on four lots—lots 80, 79, 78, & 77—I should say the rear was 15 or 20 feet higher than the front. The balance of the lots that are on the side hill are not more than a few feet difference in the front or the rear. I mean lots 73, 69, 55, 56, 58, 60, 63, 35, 39, and 40 &
41. Some of them slope front and some to the rear. I should
200 say 55, 58, & 60 & 63 slope to the rear, while 47, 45, 41, 40, and 39 slope to the front. The rest of the lots are nearly level.

X Int. 127. What improvements have ever been put on the property since you have known of the property?

Ans. None.

X Int. 128. How many times have you been on the property, and when?

Ans. The first time was about 11 years ago. During the last three years I have been there once a year.

X Int. 129. What months?

Ans. I think the month of May, 1880; September the next year, and October and June, 1882, and June in this year.

X Int. 130. Did you walk over the land every time?

—. I did not, every time. I did 11 years ago, and twice since then.

X Int. 131. Do you know of a ditch running through — land?

Ans. I do.

X Int. 132. Was that ditch for the purpose of draining the land?

Ans. I suppose it was.

X Int. 133. Is it at all impossible, from the contour of the land, that in some portions of the year it may be wet and muddy?

Ans. All land in the spring is wet & muddy. There are a few of
those lots that might be more wet than others. If the
201 culvert was kept cleared out, there would be no water remain on the land, as the land is higher than the adjacent land, and it would soon drain off.

X Int. 134. Doesn't some portion of this land form a basin?

—. Not to my knowledge.

X Int. 135. Do you remember when the ditch was widened and deepened?

Ans. I do not.

X Int. 136. Of what does the partial improvement of Charles & James street- consist?

Ans. They have been marked out by a plan, and I should say some grading done, so it leaves a ridge so you can locate the street.

X Int. 137. Do they extend into other streets?

Ans. The streets enter into Poplar St., but are not open to the public travel. The lot is fenced, and these are streets inside of the fence.

X Int. 138. Are these lots susceptible of drainage if dwelling-houses were built there, and how?

Ans. I should say they were, and easily drained by cess-pools, as all houses are in the country, where there are no sewers.

X Int. 139. Is this a populous neighborhood?

Ans. Not directly around the lots, but in going to the lots you pass a great many houses. I do not think it is a thickly-settled or populous location.

X Int. 140. How far is the nearest school building?

Ans. I should say that it was less than a half a mile. I
202 think it is near the Clarendon Hill station—I think in Hyde Park.

X Int. 141. How near to the nearest church?

Ans. Less than a half mile; I cannot locate it.

X Int. 142. Do you consider this a popular and desirable location?

Ans. I do.

X Int. 143. Does Dale St. lead direct to Clarendon Hill station?

Ans. I think it does.

X Int. 144. Do you know of your own personal knowledge whether or no a board fence is at the R. R. crossing at the Clarendon Hill station, preventing the passage of carriages from Dale St. or Metropolitan Ave. to the station.

Ans. I do know it is there.

X Int. 145. Has any improvement increased the value of property in that vicinity within the last two years?

Ans. There has by a reduction of fares on the R. R.'s.

X Int. 146. Does any street lead from this property directly to the Clarendon Hill station except Dale St., above mentioned?

Ans. Only by the way of Poplar St. & Metropolitan Ave.

X Int. 147. Can you go in a carriage to the Clarendon Hill station by way of Poplar St. & Metropolitan Ave.?

Ans. You can go as far as the fence on Metropolitan Ave.

X Int. 148. What route must you take to get to the Clarendon Hill station?

203 Ans. You can go as far as the fence and climb over or you can drive to the station by way of Poplar St., Canterbury St., & Hyde Park Ave. and Metropolitan Ave.

X Int. 149. Is that the most direct route?

Ans. I should say it was.

(Noon recess.)

X Int. 150. Have you yet received your commission from Mrs. Hanbury for — in reference to this land?

Ans. I did not sell the land and of course I was not entitled to a commission.

X Int. 151. Did you write her in reference to a commission?

Ans. I do not recollect as I did; if I did, it was in regard to care of the land and paying interest on mortgage.

X Int. 152. How would a resident on this property be able to reach Boston proper other than by Clarendon Hill station?

Ans. Only about ¾ of a mile from Roslindale or Mount Hope station.

X Int. 153. Is there any other way of reaching Boston proper?

Ans. By the roads.

X Int. 154. Did you make an affidavit before J. A. Willard in reference to this property now in litigation?

Ans. I did.

X Int. 155. By whom was it drawn up?

Ans. I think by Mr. Asa Cottrell.

(Affidavit submitted in evidence as "Exhibit D.")

204 EXHIBIT "D."

Superior Court of Cook County, to December Term, A. D. 1882. In Chancery.

MINER N. KNOWLTON *vs.* ANNA HANBURY.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Albert J. Bamford, being duly sworn, upon oath says that he is a real estate agent & negotiator of mortgages in the city of Boston, in the county of Suffolk, in said Commonwealth of Massachusetts, doing business at No. 19 Milk street; that he is acquainted with the complainant, Miner N. Knowlton; that he called at his office, 19 Milk St., on the morning of October 6th, 1882, to arrange for paying a mortgage on certain lots at Clarendon Hill, for eight hundred dollars, held by Mrs. Margaret P. Fales, wife of Rev. Dr. Fales, of Waltham, Mass'ts; that it was arranged that Mrs. Fales should come into affiant's office to receive the money and discharge the mortgage on the then next Monday morning. Rev. Dr. Fales was present at this first interview, & Mr. Knowlton produced & exhibited to him a bond of a western railroad and proposed that Mrs. Fales should take it, he representing it to be a desirable investment.

And affiant further says that on Saturday, the seventh of
205 said October, he went with complainant & showed him the Clarendon Hill lots; that in the course of the conversation, either in driving out or returning, upon an inquiry by affiant as to his knowledge of the property, he said that in making the trade he, knowing where the lots were located, compared the distance from the city of Boston with lots situated a similar distance from the city of Chicago, and that property was of, at least, as much value, & that — knew that any land fit for building within that distance in Chicago was worth certainly as much as his estate. He further stated that he didn't believe he could have got her (meaning the defendant) to trade on the terms she did, except she was hard pressed for ready money & wanted property that would be bringing her in an income.

After looking the property over & driving around the neighborhood, he expressed his admiration of the streets & neighborhood & said the Chicago property would pay better now, but thought the

Clarendon Hill property would increase in value more than the Chicago estate.

On Monday, the 9th of October, Mrs. Fales came to affiant's office, &, the complainant not coming at the time appointed, she executed & acknowledged before affiant a release and discharge of said mortgage to said complainant, & the same was deposited with her banker to be delivered upon payment to me of the amount due
206 in the mortgage.

Soon after Mrs. Fales left the complainant came and said he hadn't yet disposed of the bond, but should in a few days, and requested affiant to cast the interest up to the following Saturday, by or before which time he should discharge the mortgage. The said complainant was in my office on Tuesday & Wednesday, the 10th & 11th of said October, and on Wednesday said that he was going to New York & should carry the bond there & dispose of it & forward the amount of the mortgage as completed as aforesaid to this affiant for the purpose aforesaid, & requested affiant to see that the discharge was properly recorded. The said complainant said that the brokers told him that the bond was all right, but as it wasn't on this board they would have to send it to New York, & he thought as he wanted to visit New York he might as well attend to it himself. On Tuesday & Wednesday he talked with affiant about selling the property for him, & on Wednesday said he wanted me to put up signs for selling it in the spring & would, in the mean time, give me further instructions in regard to it.

And affiant further says that throughout all these interviews he expressed himself as favorably impressed with the Clarendon Hill property, & praised the situation and prospects of the estate several times. He didn't at any time in any way claim or intimate that the defendant, Mrs. Hanbury, had misrepresented or deceived
207 him in any respect, but spoke of her throughout in the highest terms of respect.

And this affiant further says that he is well acquainted with the suburbs of Boston & of the neighborhood of Clarendon Hills; that said location is a popular and desirable one; that it is on & near public streets leading direct to the depot, and that affiant drove said complainant over the street from said property to the depot & he made no remark in regard to the distance from said depot, & didn't in any way express any surprise in regard to it.

ALBERT J. BAMFORD.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

CLERK'S OFFICE OF SUPERIOR COURT,
BOSTON, 25 *Nov.*, 1882.

And now, on this 25th day of November, personally appeared before me, the undersigned, Albert J. Bamford, personally known to me, and subscribed and made oath to the above statement.

Witness my hand and the seal of said court, at Boston aforesaid, the day and year last aforesaid.

[SEAL.] JOS. A. WILLARD,
Clerk of Superior Court.

(Endorsed:) Filed Dec. 19, 1882. Jno. J. Healy, clerk.

208 X Int. 156. Is the affidavit marked Exhibit "D" a copy?
Ans. I think it is.

Direct examination resumed:

(The following questions counsel for defendant says he omitted to ask in the direct examination by accident and oversight:)

Int. 157. Have you any knowledge, and, if any, what, in regard to the taxation of vacant and unimproved land in the city of Boston, having relation to the price of which such lands are held and sold when they are sold? If you have such knowledge, state the source of it, and state all that you know in relation thereto.

(Objected to.)

Ans. I have. I do know of instances where lands have sold from 3 to 6 times the assessors' valuation within the last three years.

Int. 158. In question No. 83, cross, you were inquired of in regard to negotiations for the sale of this land to Mr. Page. Please state what Mr. Page you referred to in your answer to that question, and also state all that occurred between you and said Page. State the same fully.

Ans. Charles J. Page. I spoke to him in reference to buying the lots. He said he did not wish to buy them without they were sold very low—much below their value. He said he and his relatives had a great deal of land near it. He did not want
209–219 to sell any of his land at less than 6 cts. a foot, and has so stated to me several times since.

Int 159. Did he state or did you know the location of the lands he referred to? And, if yea, state as near as you can where they are located, having relation at the same time to the Clarendon Hill lots, so called.

(Objected to.)

Ans. They are beyond the Clarendon Hill lots; I do not know how far. I think he has some in the same plan of lots referred to.

Int. 160. You were asked, in question 124, cross, whether you were acquainted with Theodore B. Moses. I now desire to enquire if you know him by sight; and, if yea, when did you last see him, and where, and what was he doing at that time?

(Objected to.)

Ans. I saw him here yesterday. He was talking to Mr. Knowlton and opposing counsel.

Int. 161. Whether or not you have seen Mr. Knowlton since you

commenced your testimony; and, if yea, state when and where, and what he was engaged in doing.

(Objected to.)

Ans. Yes; I have seen him across the table assisting and dictating to opposing counsel yesterday and to-day.

Int. 162. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the
220 subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

—. I have stated everything with the exception of the correction. Instead of climbing the board fence there was an opening left for foot passengers to get to the station. In regard to the sloping of the lots I wish to reverse the statement I made before. I think the lots slope the other way from what I stated in regard to the last lots mentioned.

Cross-examination resumed:

X Int. 163. In answer to int. 159 can you state on what part of the plan referred to is the land?

Ans. Well, it shows in part.

X Int. 164. Will you please mark on the map marked Exhibit B, Moses, in ink the portion which shows?

Ans. It is enclosed within the stars, which are lettered A, B, C, D.

Direct examination resumed:

In. 165. Please explain whether you mean the whole territory thus enclosed or portions of it within the said boundaries.

Ans. Portions of it.

ALBERT J. BAMFORD.

Attest: JOHN G. STETSON, *Examiner.*

WEDNESDAY, *Sept.* 12, 1883.

221 Albert J. Bamford appears and says: I have looked for letters, papers, & memoranda, which I was requested to look for and produce here, & have found none.

A. J. BAMFORD.

Attest: JOHN G. STETSON, *Examiner.*

222 *Deposition of Thomas F. Fales.*

BOSTON, *Sept. 6th,* 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants, Hanbury and Rorke:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Thomas F. Fales; 66; Waltham, Mass.; clergyman.

Int. 2. Do you know Minor N. Knowlton; and, if yea, when and where did you first meet him?

Ans. I do. I met him in the early part of October, 1882, in the office of Mr. Bamford, in this city, No. 19 Milk St., Boston.

Int. 3. Whether Mr. Bamford was present at that time.

Ans. He was.

Int. 4. Please state all that was said and done by or in the presence of Mr. Knowlton at that interview, beginning with the first that you can recall and giving the whole fully and to the best of your recollection.

Ans. To the best of my recollection, I was talking with Mr. Bamford at his desk, when he looked up and said, This is the gentleman to take up the mortgage. Mr. Knowlton then offered me a bond in payment of the mortgage. I examined it, and as it was upon a road with which I was not familiar I declined accepting it. He then went into conversation with Mr. Bamford respecting it. Mr. Bamford suggested his negotiating the bond, and that ended the
223 interview with Mr. Knowlton. I arranged to have the discharge to be delivered when Mr. Knowlton should be ready to pay the money. All this occurred while Mr. Knowlton was standing by.

(Answer objected to.)

Int. 5. What mortgage was referred to at that interview?

Ans. The mortgage on the Clarendon Hill lots given by Mrs. Hanbury to Cheever for $800 assigned to Margaret P. Fales, my wife.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 6. What was the rate per cent. on this mortgage?

Ans. Seven per cent.

X Int. 7. Do you consider 7 per cent. a high rate to pay on a first mortgage of $800 on property valued at $10,000?

Ans. I knew so little about rates of interest and the considerations that govern rates of interest that I cannot give a very intelligent answer to that question.

THOS. F. FALES.

Attest: JOHN G. STETSON, *Examiner.*

224 *Deposition of Artemas R. Holden.*

BOSTON, *Sept. 6th*, 1883.

Direct examination by ASA COTTRELL, Esqr., of counsel for defendants, Hanbury and Rorke:

Int. 1. Please state your name, age, residence, and occupation.

Ans. My name is Artemas Rogers Holden; 73; my residence is No. 77 Poplar St., in the city of Boston; I have no occupation except taking care of my property.

Int. 2. Whether or not at any time you applied to the assessors of the city of Boston or either of them in behalf of Mrs. Hanbury in regard to the tax on her lots at Clarendon Hill; and if you shall

answer yea, then state when it was, by whose request, and to whom you applied.

Ans. I did. I don't know that I can give the year; I think about 1879. I applied, if my memory serves me right, at the request of Dr. McDonald. I applied to one of the principal assessors; I am inclined to think it was Mr. Cushing.

Int. 3. What representations did you make to Mr. Cushing or to the principal assessor to whom you applied, and what answer or decision did you receive, if any?

(Objected to.)

Ans. I made the representations that I received from Dr. McDonald, that Mrs. Hanbury was a widow with three minor children.

225 I think that she was sick at the time, and that I so represented, and under the statute I thought she was entitled to an abatement, these several lots of land yielding no income. Upon these representations the taxes were abated.

(Answer objected to.)

Int. 4. When were they abated? Were they abated at the time of your interview and representation, as stated in your last answer, or at some other time?

(Objected to.)

Ans. I think they were abated at the time. I cannot say certainly as to that—the date of the abatement. The record will show.

Int. 5. Will the record show whether the abatement was made at the time of your representation of the case or at a subsequent time?

Ans. It would not. I think not.

Int. 6. Did you report the result of your interview with the principal assessor; and, if yea, when and to whom and what did you report?

(Objected to.)

Ans. I reported to Dr. McDonald, and told him that it was abated. I cannot tell when; a few days after the abatement.

Int. 7. Whether or not you applied more than once before it was abated.

(Objected to.)

Ans. I cannot say; perhaps I did.

Int. 8. Please state whether any other representations were made by you in said matter other than what you have already stated.

Ans. I don't remember of any.

226 Int. 9. Did you make any representations in regard to the value of the property—the property of Mrs. Hanbury—or the encumbrance upon the property?

Ans. I think I did.

Int. 10. Whether you have been an assessor of taxes in the city of Boston; and, if so, for how long and up to what time?

Ans. I think I have served the city about 25 years up to last year.

(Adjourned.)

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Int. 11. Have you any knowledge, and, if any, what, in regard to the taxation of vacant and unimproved land in the city of Boston having relation to the price at which such lands are held and sold when they are sold? If you have such knowledge state all you know in relation thereto.

Ans. Estates have been sold much beyond their valuation by the assessors and mortgaged, both, as a general thing. The assessors leave a small margin; in other words, they are not taxed up to their full value.

Int. 12. Whether or not you can state instances of sales or instances of mortgaging unimproved vacant lands in the city of Boston in which there were large variances between the assessors' valuation for taxation and the amounts for which they were sold or mortgaged.

227 Ans. There have been a great many, but to enumerate them would be difficult.

Int. 13. Please state the most prominent instances, and if you cannot give the names of the parties give the localities of the estates, as far as you can.

Ans. There was one estate in South Boston—unimproved land—that was mortgaged to the Lancaster Savings Bank for a great deal more than it was taxed—I guess 5 times and I don't know but 10 times—and they lost money on it. There are other instances—a great many—where vacant lands are sold beyond what they are taxed for.

(Objected to.)

Int. 14. Do you know where these lots in dispute are located, and what, in your judgment, is their value, or what was it in September, 1882?

Ans. I know pretty near where they are located, though I never was on the land and I know very little about West Roxbury. I don't know that I am capable of giving an opinion. They have been taxed as high as 4 or 5 cts. per foot, as I have been informed.

(Objected to.)

Int. 15. Whether or not you have had any conversation or conversations with Benjamin Cushing, one of the Boston assessors, in regard to the value of these lots; and, if yea, state when and all that was said in each conversation on that subject.

(Objected to.)

228 Ans. I had some conversation with him about these lots at the time of the abatement—exactly what I do not recollect; that was in 1879 or '80; I don't recollect. I don't recollect the nature of the conversation, except that it was about the value of this land at that time. Now, I had a conversation with him yesterday about these lots, and examined the plan in the office. He stated to me that they had been taxed as high as 4 or 5 cts. per foot. He said this purchase of Clarendon Hills property was made by Jones and

C. J. Page, and they had been cutting up into lots and selling. I believe they have not sold all out. I believe they have some there now. That is all the conversation I had with him—about all.

(Objected to.)

Int. 16. Whether or not Mr. Cushing expressed an opinion as to the value of said lots.

(Objected to.)

Ans. I don't think he did.

Int. 17. You were asked in question 9 whether you made any representations to Mr. Cushing or the principal assessor in regard to the value of the property, the poverty of Mrs. Hanbury, or the incumbrance upon the property; to which you answered, I think I did. Please state to what your answer to said question referred and state all that was said on either point.

Ans. Well, I thought it was embodied in those questions without giving separate and distinct reasons for each particular thing.
229 I represented to Mr. Cushing that this was valuable property, as described by Dr. McDonald, without bringing any income, but how valuable I did not know. The poverty, I don't think there was much said about it either way, but probably it was touched upon, undoubtedly, and the mortgage of $800 was represented. We sometimes state just what the mortgage is. Unimproved property is not very desirable. She being a widow with three children, the whole was abated.

Int. 18. Whether or not Dr. McDonald informed you that Mrs. Hanbury had been and was at that time seriously ill, and whether or not you stated that fact to Mr. Cushing in your interview with him.

Ans. The answer to that, I think, I have already stated in some question put before, but if I have not I did so state to him. Dr. McDonald so stated to me, and I stated all the facts that occurred to my mind.

(Objected to.)

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 19. Do you know that under the statute it is a poor widow with three children, and heavily mortgaged, unproductive land would be allowed an abatement of taxes?

(Objected to.)

Ans. I do not, because that is not the law. Whenever the assessor shall find any person, by reason of age, infirmity, and poverty, are unable to contribute their proportion of the public taxes the
230 assessors may abate the whole or any part of said tax at their discretion. I think that is the sum of the statute. A widow and three children would come within the scope of that statute unquestionably.

X Int. 20. What is a good rate of interest to pay on money bor-

rowed, where there is a good security on the money loaned, in this vicinity?

Ans. Six per cent.

X Int. 21. Do you know of your own knowledge whether this plat of land forms a basin and is covered with water a portion of the year?

Ans. I don't know anything about it.

X Int. 22. Have you ever had land for sale in this vicinity?

Ans. I don't know that I have.

X Int. 23. Do you know of this land being put up for auction within the last two or three years?

Ans. I do not know anything about it.

X Int. 24. Have you knowledge of the manipulations of land speculators in this vicinity?

Ans. It is a pretty difficult question to answer; I don't know much about them; there are people who speculate in lots and in lands.

X 25. Do you think the situation of this land on Clarendon Hill popular or desirable for the purpose of putting buildings there to rent?

231 Ans. Well, I never have seen it. Ward 23 is increasing in buildings and population; I don't know about this particular spot.

X 26. Do you know of the financial standing of Mrs. Hanbury, of your own personal knowledge?

Ans. I do not.

X 27. Are you acquainted with Mr. Benjamin Cushing?

Ans. Yes, sir.

X 28. Is he a man of good reputation for truth and veracity?

(Objected to.)

Ans. Beyond a doubt.

X 29. A deposition made by him you believe would be a true and fair statement of the questions asked him, do you?

(Objected to.)

Ans. I do.

X 30. Do you know of any hotels, stores, school-houses, or churches in the vicinity of this Clarendon Hill property?

Ans. I do not.

ARTEMAS R. HOLDEN.

Attest: JOHN G. STETSON, *Examiner.*

232 *Deposition of Calvin R. Page.*

BOSTON, *Sept. 7th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Calvin R. Page; 54 Beech St., West Roxbury, called Clarendon Hills; house painter.

Int. 2. Whether or not you are acquainted with the lots at Clarendon Hills, consisting of 27 lots lately owned by Mrs. A. Hanbury. And, if yea, how long have you known them and how near to them do you live?

Ans. Well, I don't know exactly as I can locate her lots particularly; I know the whole tract; I have known them for 9 years. I live on the west, near the centre, across the street, facing this tract.

Int. 3. Please examine the plan marked "Exhibit A, Moses," and direct your attention to the lots designated on it by blue coloring, and, commencing at the northerly corner of the plan, state what the fact is in regard to said lots, in respect to their elevation and depression and whether they or any of them are covered by water.

Ans. There are four lots, numbered 77, 78, 79, & 80, high in the rear and slope. They are situated on very high ground; about the same height as 69 & 73. The lots 55 & 56, fronting on
233 Charles St., on the same gradual slope to the rear. The same with 58, 60, & 63. Lots fronting on James St. on the east, in the rear of Charles St.; the rear of these lots is the lowest. Charles St., rear, and James St., rear, are the lowest. These lots are numbered 39, 40, 41, 45, & 47. Lot corner of Poplar and James St. is on fairly high land—a nice building lot. The lots on the opposite side of James St., numbered 23, 24, 27, 28, & 29, are on a slope on the westerly side of this tract, sloping to James St. 4 lots fronting on Beach St., numbered 8, 9, 12, & 13, are on the continued slope, and are good building lots. Lot numbered 1, corner of Poplar and Beach Sts., are mostly on top of the hill—high land. They are never covered with water, only about 24 hours, during a severe thunder-storm in summer or a sudden thaw in winter.

Int. 4. Please state which of the lots are thus affected by water, and state how much and what part of each lot, and state also the reason why they are so affected.

Ans. 39, 40, & 41. The lower part of those lots, perhaps six inches; perhaps about ½ of those three lots at the present time; on account of obstructions in the culvert under Poplar St., opposite Dale St.

Int. 5. What do you mean by six inches in your last answer?

Ans. It might rise six inches at the highest.

Int. 6. Please explain about the culvert you have referred to.
234 State where it runs and what it is connected with.

Ans. It runs underneath Poplar St.; empties into a brook which flows alongside of Dale St.; empties down on low lands at Clarendon Hill station.

Int. 7. Where does the drain which empties through this culvert run?

Ans. From the side-hill flowage.

Int. 8. When were these drains and this culvert constructed?

Ans. The culvert was built 8 years ago; the drain, so far as I know, was formed by nature, before my time.

Int. 9. How long has the culvert under Poplar street been obstructed?

Ans. I could not tell exactly; obstructed gradually for want of care and attention; mostly done by school children. They make that vicinity a play-ground.

Int. 10. Whether or not before said obstructions were created any water stood upon said lots.

Ans. After the culvert was finished, for a year or more, the water flowed off as it came.

Int. 11. Is there any water standing on said lots? How and when did you last see any, and how long did it then continue?

Ans. There is no water standing there now; last spring, at night; in the morning gone; before sundown, at night; before nine in the morning.

235 Int. 12. How long have you lived where you now live on Beach St., and how far is it from lots 39, 40, & 41, and how often do you see these lots?

Ans. I have lived on Beach St. nine years Aug. 1, last; perhaps 125 feet; certainly twice a day, in passing.

Int. 13. During the last five years how long, at the longest, at any one occasion, have you seen water on these lots?

Ans. I don't recollect, only those of recently. I have never noticed any. If they had been covered with water I should have noticed them.

Int. 14. Do you know where Mr. T. B. Moses lives, and how does the height of the three lots, 39, 40, & 41, compare with the height of the ground at his house?

Ans. I do. I should say that the lowest part of these lots is as high or higher than the ridge pole of Mr. Moses' house.

Int. 15. You have stated that lots eighty, seventy-nine, 78, 77, 73, & 69 are high on the rear. Please state how much higher they are on the rear than on the front.

Ans. I cannot state. The rear line is very high and slopes gradually down to the front. Those 77, 78, 79, & 80 are steeper than the others.

Int. 16. What is the soil of these lots?

Ans. Well, it is fair; loam on top and gravel—good gravel.

(Objected to.)

236 Int. 17. What do you know, if anything, in regard to the value of gravel in this locality? State your means of knowledge fully.

Ans. I know that gravel has been sold from lots adjoining to the city of Boston and others, but do not know the price it brought.

Int. 18. You speak of school children; where is the school-house?

Ans. Charles Sumner school, Roslindale, one mile and one-quarter from my house.

Int. 19. What improvements, if any, have been made in the vicinity of these lots within the last two years?

Ans. Lower rate of fares on the R. R.; the Sunday train, about 9.30 a. m., for the accommodation of people who wish to go to church

in the city; the streets of Poplar and Beach are lighted by the city by lamps; Cochituate water runs through Poplar to Dale; hydrant there directly opposite this tract of land, running down Dale St. as far as S. B. Morse's house, and there are five additional lamps been placed on Dale St. The primary school has been fitted up in the hall of the Ladies' Association, which commences next Monday—the school commences.

Int. 20. What is the Charles Sumner school?

Ans. Primary and grammar.

Int. 21. How many houses are there within 2,000 feet of this land, and what class of people occupy them?

Ans. I should say there was thirty-five or forty dwelling-houses; a nice class of people; perhaps eight German families; no Irish.

Int. 22. What depot is the nearest, and how is it reached?

237 Ans. Clarendon Hills station. The direct way is through Dale St.

Int. 23. Is there an obstruction to carriage travel across the R. R. at Clarendon Hills; and, if so, how long has it existed and what do you know in regard to it?

Ans. There is an obstruction. I can't positively state how long it has been there; three or four years.

Int. 24. What knowledge have you in regard to the value of real estate in the neighborhood of Clarendon Hills? State what experience you have had in relation to it and what knowledge you had of prices of lands there.

(Objected to.)

Ans. I have no personal knowledge. I have had no experience. I own ¼ of the lots in that tract remaining unsold, and our prices are 10 to 12 cts. per foot for best and 6 cts. for lowest, and will continue to hold them at that rate.

Int. 25. What do you know, if anything, in regard to the continuance or discontinuance of obstruction to carriage travel across the R. R. at Clarendon Hill station? And give the source of your knowledge, if any.

Ans. I haven't any knowledge.

Int. 26. Do you know by sight a person who is called Mr. Knowlton; and, if so, is he here present, and what is he engaged in *in* doing?

Ans. I know by sight Mr. Knowlton; he is here present. I know nothing of his business.

238 Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 27. I- regard to interrogatory 24, how long have you owned the lots referred to?

Ans. Since my father's death—June 1st, 1882.

X Int. 28. At any time did your father own the whole lot, including the lots in litigation?

Ans. I know that there were lots sold in that tract before he became owner.

X Int. 29. Did you or your father or brother ever own any of the lots marked in blue on "Exhibit A, Moses?"

Ans. They did. James H. and Charles J. Page, my brothers, owned the lots.

X Int. 30. To whom did they sell these lots?

Ans. A Mr. Whiting. I do not know his Christian name.

X Int. 31. To whom did Whiting sell them?

Ans. I do not know.

X Int. 32. Please state what was the consideration paid by Mr. Whiting.

Ans. I do not know.

X Int. 33. Have you heard that they took certain property or the equity in certain property in exchange?

(Objected to.)

Ans. I have not.

X Int. 34. Do you know whether your brothers derived any benefit from the consideration of this sale?

(Objected to.)

Ans. I do not know.

239 Int. 35. How many lots do you own in this tract shown in "Exhibit A?" And specify.

Ans. We own the lots together—four of us. We own all but three or four lots. I should say lots 7, 34, & 36. We—I mean Calvin R., James H., & Charles J. Page & Mary Louise Baker, my brothers and sisters.

X Int. 36. When were these three sold?

Ans. At an auction sale, in the summer of 1873.

X Int. 37. Were you present at that sale, and were bidders present, acting in your interest or your brothers'?

Ans. Not that I know of.

X Int. 38. Were you ever informed that there were?

Ans. Never.

X Int. 39. Were many persons present, and how long did the sale last?

Ans. There were a great many present. I should think the sale was about three hours in length at the time.

X Int. 40. Did you advertise the whole tract for sale?

Ans. They did. I had nothing to do with it at that time.

X Int. 41. How many lots were put up and knocked down?

Ans. I cannot state; quite a number. I knew that there were bids of 5 or 6 c. that were not accepted; they were withdrawn.

X Int. 42. Were as many as ten sold?

Ans. I don't know.

240 X Int. 43. Could there have been as many as fifteen sold?

Ans. I don't know. I was there only about an hour, at the commencement.

X Int. 44. Did any of those lots which were sold ever get back into your or your brothers' hands?

Ans. Not that I know of.

X Int. 45. Have you ever put these lots up at auction more than once?

Ans. No.

X Int. 46. Do you know whether Mr. Bamford ever made an offer of these lots to you or to you and your brothers, through either of your brothers?

Ans. I do not know.

X Int. 47. What was the land assessed for at the time you sold to Whiting?

Ans. I do not know.

X Int. 48. Are you or are any of your brothers in any way connected or have been with the Metropolitan Land Co. referred to in map marked "Exhibit B, Moses?"

Ans. I have not been connected nor my brother James H. I don't think Charles J. is connected, only as an agent.

X Int. 49. What would you give for land situated in this plat on Clarendon Hills?

Ans. I should not want to buy any more. There is one lot there that I would like—No. 1, corner of Poplar & Beach St.

X Int. 50. With the exception of this one lot, would you give two thousand dollars for the balance?

241 (Objected to, unless with authority it is made as an offer to take $2,000.)

Ans. If I had the money to spare I would. I think that is desirable property.

X Int. 51. Has the land increased in value within a year?

Ans. We think it has.

X Int. 52. Do you know of these blue lots being offered for sale since you and your brothers owned them?

Ans. I do not know.

X Int. 53. Would you have been likely to have known if they had been offered at auction?

Ans. I should have been likely to have known it.

CALVIN R. PAGE.

Attest: JOHN G. STETSON, *Examiner.*

242 *Deposition of Otto Sharp.*

BOSTON, *Sept.* 7, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants, Hanbury and Rorke:

Int. 1. Give your name, age, residence, and occupation.

—. Otto Sharp; 48; Jamaica Plain; real estate.

Int. 2. How long have you been engaged in the real estate business; where is your office, and in what localities have been your transactions principally?

Ans. I have been engaged in the real estate business for the last 15 or 16 years. My office at present is 61 Court St. The most

real estate that I handled has been in Jamaica Plain and West Roxbury district.

Int. 3. Are you acquainted with the locality known as Clarendon Hills, and do you know the value of real estate in that neighborhood?

Ans. I am acquainted with the locality; I know what property has been sold for at auction and private sales.

(Objected to.)

Int. 4. Do you know the lots near Beach and Poplar Sts. and which are shown on the plan marked "Exhibit A, Moses?"

Ans. I do.

Int. 5. Please examine said plan and notice the lots that are marked in blue and state generally what you know of the topography and general appearance of them.

243 Ans. I know that in 1873 or '4 the property was put up at auction; I was there at the sale; some lots fetched 8 and 10 cts. each, which I know was *bona fide* sales, made by Germans within a stone's throw of that property. I hold the mortgage from another party given by Dr. Little at the rate of 5 cts. per foot; the mortgage has been paid and cancelled. I own property myself there which I think is good property to hold in that locality.

Int. 6. State the value of the lots shown on the plan, "Exhibit A, Moses," which are marked in blue at the present time.

Ans. I should say all the way from 5 to 6, 7, and 8 cts. per foot.

Int. 7. What were they worth in September, 1882.

Ans. About the same.

Int. 8. Please state what improvements, if any, have taken place within the last two years to affect the value of vacant land in this locality.

Ans. The city of Boston extended their water pipes up to that locality. Jamaica Plain Gas-Light Co. has extended their gas pipes to that locality, and extra trains have been put on by the Boston & Providence R. R. Co.; our fares have been reduced by the R. R. corporation.

Int. 9. What do you know, if anything, in regard to the value of gravel or gravel banks in this locality? State all you know about that subject.

(Objected to.)

244 —. I was acquainted with the foreman of the city works, and he told me that he used some gravel from those lots at the rate of 25c. per load. I have sold the city of Boston myself a good many thousand squares at the rate of $2.50 per square.

Int. 10. What is the quality of the gravel on such of these lots as are high and on which there are gravel banks?

(Objected to.)

Ans. I should call it binding gravel.

Int. 11. What is it worth on the lots as it lays per square of 216 cubic feet?

(Objected to.)

Ans. They generally pay at the rate of 25 cts. a load, and a square contains about 12 loads.

Int. 12. How often have you observed these lots in the last 5 years, and how near have you been to them on those occasions?

Ans. I have been right on them at Poplar St., at the head of Dale St., I suppose 15 or 20 times.

Int. 13. What is the fact about these lots in regard to water standing upon them?

Ans. I have not seen any water upon them. There might possibly be some in the winter, where the ice forms and the ground is frozen and the water can't soak in the ground.

Int. 14. Whether these lots, all of them or any of them and which of them, are suitable and desirable for building purposes, for dwelling-houses.

Ans. All of them are.

245 Int. 15. What class of people generally occupy the houses in this neighborhood?

A. I should call them a good class.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 16. How near is the nearest sewer to this lot?

Ans. There is a drain going from those lots across Poplar St. into Dale St. I don't know whether it is closed up or not.

X Int. 17. Is this drain covered?

Ans. It goes underneath Poplar St. It is a pipe drain.

X Int. 18. Is the drain covered except where it goes under Poplar St.?

Ans. I could not say.

X Int. 19. Do you know whether or not there is a ditch running through this property?

Ans. It is a kind of a valley.

X Int. 20. Do you swear that, with the exception of this valley formation, there is no ditch through this property?

Ans. I should call it a valley.

X Int. 21. Is that the only answer you are willing to give?

Ans. That is all.

X Int. 22. Is this drain spoken of above distinct from this valley, as you term it?

Ans. It connects with it.

X Int. 23. Is this the only answer you are willing to give to the above interrogatory?

Ans. It is all that I can say about it.

246 X Int. 24. Is there any sewer running to this property?

Ans. Not that I know of.

X Int. 25. How near is the nearest sewer?

Ans. It must be 4 miles—city sewers I mean.

X Int. 26. Do you consider property four miles from a sewer good city property?

Ans. Yes, sir.

X Int. 27. Please state in what condition Charles and James St. are.

Ans. There never has been much done to them.

X Int. 28. Are they practically streets at all, except on the map?

—. They have been laid out, but never much done to them.

X Int. 29. What do you mean — laid out?

Ans. Staked out with stakes, and perhaps the sod removed.

X Int. 30. Do fences separate them from Poplar St.?

Ans. I believe there is a stone wall running along Poplar street in front of both Charles & James St., except across the opening of those st's.

X Int. 31. Is there anything across the openings of those st's?

Ans. I could not say at the present time.

X Int. 32. Do you know whether the land is used or has lately been used to pasture cattle or horses in?

Ans. That I could not tell.

X Int. 33. Is there any obstruction on Charles and James St. farthest from Poplar St.?

Ans. I could not say.

247 X Int. 34. When you spoke of a valley do you mean that a basin is formed by these lots?

(Objected to.)

Ans. I mean to say that the land on both sides is a little higher than that in the centre.

X Int. 35. State, as near as you can, how much lower the land in the centre is than the land on the sides.

Ans. I could not, because I never took a survey of it.

X Int. 36. Is the ascent steep?

Ans. Not very.

(Adjourned.)

SEPTEMBER 8, 1883.

X Int. 37. In what direction does the land on the northerly side of this lot slope?

Ans. Slopes toward the south.

X Int. 38. Is any portion of Poplar St. above the level of this land?

Ans. I think it is—some of it.

X Int. 39. How many auction sales have you ever attended or knew about of this land or portions of it?

Ans. To my knowledge, I attended one.

X Int. 40. Did you take any part in this sale?

Ans. No, sir.

Int. 41. Why were you there?

Ans. I went to see what prices land would fetch, as I owned some property near by.

X Int. 42. Had you any intention of buying?

Ans. I did not, because I had a great deal of land on my hands, besides that over there, in other directions.

248 X Int. 43. Who was the auctioneer?

—. I could not state positively, because it was so long ago. I think the man's name was Mr. Bird, but it is so long ago I will not be positive. It must have been 8 or nine years ago.

X Int. 44. Were there many or few people present?

Ans. I should say a good many.

X Int. 45. By whom was the land offered for sale?

Ans. I think it was by Mr. Page.

X Int. 46. What is his business?

—. I think his business at the time was real estate and insurance.

X Int. 47. Do you know of his having been connected with the Metropolitan Land Co.?

Ans. I don't know anything about it.

X Int. 48. Do you know of other auction sales of land with which he was connected? If yea, state where.

Ans. I do not, because I have not watched Mr. Page.

X Int. 49. Was the whole plat offered at this sale?

Ans. No, sir; in small lots; only a portion.

X Int. 50. How many?

—. That I could not state.

X Int. 51. Did you see the advertisement of this sale?

Ans. I think I have.

X Int. 52. Where?

—. Out in Jamaica Plain there were put up posters.

249 X Int. 53. Were all or nearly all the lots advertised for sale?

Ans. That I could not state.

X Int. 54. From your own personal knowledge can you state whether there were any *bona fide* sales; and, if so, to whom?

Ans. Yes, sir; a man named Mr. Leonard; he bought one or two lots. I think he paid 10 cts. a foot.

(Objected to—last part of answer.)

X Int. 55. Can you swear that he did pay 10 cts. a foot.

Ans. That is what he told me.

(Objected to.)

X Int. 56. If there had been any auction sales or attempted auction sales since the above, would you have been liable to have known of them?

Ans. I don't know.

X Int. 57. Do you know whether at the northerly end of Charles & James St. there is a reserve?

Ans. I do not.

X Int. 58. If this plat of land had been put up at auction by Mrs. Hanbury would you have been liable to have known of it?

Ans. I might, and I might not.

X Int. 59. Is gas burned in the street lamps in this vicinity?

Ans. I think it is.

X Int. 60. Are you well enough acquainted with this vicinity to be liable to know if gas is burned in the street lamps?

250 Ans. A thing that I never pay much attention to. There are iron posts there.

X Int. 61. Is there a large body of low lands opposite the Clarendon Hills station? If yea, state how much.

Ans. There is some; how many acres, I do not know.

X Int. 62. Is Dale St. wholly within the city of Boston?

Ans. As far as I know.

X Int. 63. How long has your office been at 61 State St.?

Ans. I never had an office at 61 State St. My office is at 61 Court St. About three years.

X Int. 64. Where was your office previous to that?

Ans. I have been traveling out of the country a great deal. My office has been out to my house. I received my letters at different places in Boston.

X Int. 65. Are you put down in the Boston directory as a real estate agent?

Ans. That I don't know.

X Int. 66. Have you been engaged in any other business; and, if so, what?

Ans. I have been in the tobacco business.

X Int. 67. Were you a manufacturer?

Ans. One time, of cigars.

X Int. 68. Did you have a factory?

Ans. At the store.

X Int. 69. For how long did you manufacture cigars?

Ans. I think from 1861 to '66.

X Int. 70. Why did you change your business?

251 Ans. Because I wanted to change it.

X Int. 70½. What business did you then go into?

Ans. I bought some real estate sometimes.

X Int. 71. Was that your only business?

Ans. No, sir.

X Int. 72. What else?

Ans. I discounted commercial paper sometimes.

X Int. 73. Was trading in real estate and discounting commercial paper your only business?

Ans. I might have traded in cigars. I know that I gave up store.

X Int. 75. Was that your only occupation, viz., real estate, discounting commercial paper, and trading in cigars?

Ans. At that time it was — 1866 or '7.

X Int. 76. What was your business next?

Ans. Real estate, and discount, sometimes, commercial paper.

X Int. 77. Were you engaged in any other occupation at that time?

Ans. I handled some cigars.

X Int. 78. Where was your office?

Ans. I think in 1870—I think it was—I had a little office down in Kilby St. I could not state how long.

Direct examination resumed:

Int 79. For the last ten years what has been your business? State specifically.

(Objected to.)

Ans. Real estate, and discount commercial paper.

252 Int. 80. Whether or not you know by sight a person called Mr. Knowlton; and, if yea, when and where have you seen him and what was he engaged in doing.

(Objected to.)

Ans. I think the first time I saw that gentleman was here in the office yesterday. What business he is engaged in I do not know.

Int. 82. State what and all that you have seen him do and say since you first saw him yesterday.

(Objected to.)

Ans. He assisted the attorney on the other side opposite me in this case, and attorney on the other side called him his client.

OTTO SHARP.

Attest: JOHN G. STETSON, *Examiner*.

253 *Deposition of Benjamin Cushing.*

BOSTON, *Sept. 10th*, 1883.

(Mr. Benjamin Cushing came in to make a statement in regard to the question of the application of Mrs. Hanbury for an abatement of taxes referred to in his former testimony, int. No. 4, and says:)

Ans. I wish to recall the answer to question No. 4 and substitute the following answer:

I do know her. I first met her at the assessors' office, city hall, Boston, subsequent to August, 1880, at which time she called to ascertain if Mr. Holden's application for an abatement of taxes on her behalf had been attended to. I replied: It has been attended to, and you need give yourself no further trouble. I was mistaken. It was Mr. Holden who made the statement to me instead of Mrs. Hanbury.

BENJ. CUSHING.

Attest: JOHN G. STETSON, *Examiner*.

254 *Deposition of Austin D. Collins.*

BOSTON, *Sept. 10th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

Ans. Austin D. Collins; 36; Boston; real estate agent.

Int. 2. How long has this been your occupation, and where have you pursued it?

Ans. 13 years; in Boston.

Int. 3. Where is your office, and where have your dealings principally been?

—. 286 Washington St., Boston, and suburbs.

Int. 4. Whether or not you are acquainted with the value of land in the vicinity of the Clarendon Hills station, on the Boston & Providence R. R.?

Ans. I am.

Int. 5. Please examine the plan ma ed Exhibit A, Moses, representing lots of land at the corner of Beach and Poplar Sts., and state whether or not you are acquainted with said property.

Ans. I never have been on this land. I have made enquiries about it and have a general impression of its value.

Int. 6. What is its value—I mean per foot—and call your attention to the lots designated by blue coloring on said plan?

(Objected to.)

Ans. I should put it at 5 to 8c. per foot.

255 Int. 7. How near to this land have you bought or sold land?

Ans. The nearest to this land I have had an offer for was 60,000 feet on Metropolitan Ave., further from the station, corner Hilburn St., within six months.

Int. 18. Was that price accepted?

Ans. It was not.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 9. What is a fair rate of interest to pay in this vicinity on a first mortgage on land which is worth three times the face of the mortgage?

—. In Boston or Roxbury, 6%; further out, 7%.

X Int. 10. Would the same rates hold when the property is worth twice the face of the mortgage?

Ans. On land it would.

X Int. 11. Do you know what are the general features of this land marked on "Exhibit A, Moses?"

Ans. I understand some of it is below the grade of Beach & Poplar St.; the larger part is level, and some of it needs surface draining.

X Int. 12. What proportion is level?

Ans. My impression is ¾.

X Int. 13. Do you know whether there is a drain or culvert running through this land?

256 Ans. I know there was a surface drain there 10 years ago, and I am informed it drained it perfectly.

X Int. 14. Does this drain connect with any sewer, to your knowledge?

Ans. I think not. There is no system of sewerage in the vicinity.

A. D. COLLINS.

Attest: JOHN G. STETSON, *Examiner.*

257 *Deposition of Erdman Hemman.*

BOSTON, *Sept.* 10*th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

Ans. Erdman Hemman; 60; Roslindale; milk farmer.

Int. 2. What street do you live on and on what part of the street?

Ans. Beach street, about the middle, between Washington and Poplar St.

Int. 3. How far do you live from the corner of Beach and Poplar Sts.?

Ans. I think about 1,400 feet.

Int. 4. Please examine "Exhibit A, Moses," and also "Exhibit B, Moses," and say whether or not you recognize the property represented on plan "A" and also designated on Exhibit B by words "approximate location of Page estate."

Ans. Yes; I do. I think that is about the location.

Int. 5. How near do you live to the lots shown on those plans?

Ans. My land is bounded on it, and my house is about 200 feet distant from it.

Int. 6. What part of it is bounded by your land?

Ans. The western part.

Int. 7. How often do you see this land, and how often do you pass by it?

258 Ans. I see it daily, because I use it as a cow pasture.

Int. 8. Do you have the whole of the premises shown on plan, "Exhibit A," Moses, for cow pasture?

Ans. No; I got that belonging to Mr. Page.

Int. 9. Explain what you mean. Is it fenced and divided, or does it all lay together?

Ans. It lays all together.

Int. 10. Then do I understand you that you use all the plat shown in "Exhibit A?"

Ans. Yes; I use all.

Int. 11. Whether any part of this plat of land is covered with water; and, if yea, then what part.

Ans. No; there is none of it covered with water.

Int. 12. Whether or not at any point or place on this land shown on the plat the ground is wet or damp, or how otherwise.

Ans. It is not wet, exactly.

Int. 13. Is it damp; I mean now?

Ans. It is not damp now.

Int. 14. What is the condition of the lowest part of the ground on said plat at this time?

Ans. There is no standing water there.

Int. 15. State, if you know, how deep it is necessary to dig to get water at the lowest part of this land.

Ans. I dug down two or three feet myself near a spring on level ground without finding water at the lowest point of the land.

259 Int. 16. When was it that you did this?

Ans. The first week in July.

Int. 17. Whether or not there is a culvert running across Poplar St., opposite this land.

Ans. Yes; there is one five feet deep—deeper than the lowest part of that land.

Int. 18. How long has it been there, and who constructed it, and how wide is it?

Ans. It has been there as long as I know the place; I should say 15 years, tho' I don't know but the city of Boston deepened it; they made it 4 or five feet deeper; I think it is at least 4 or five feet wide.

Int. 19. Whether or not water stands on this land or any part of it at any time in the year.

Ans. No standing water at any time.

Int. 20. For how long have you lived where you live now?

Ans. About eleven years.

Int. 21. How often do you go by this land in the winter time and spring of the year?

Ans. Not very often, but I see it daily out of the window of my house.

Int. 22. If this land or any part of it was covered with water in the winter or spring, or at any part of the year, whether or not you would know it.

Ans. It is not covered with water; I would.

Int. 23. What is the height of the lowest part of this land compared with the land at T. B. Moses' house?

Ans. It is about 30 feet higher.

260 Int. 24. Whether or not you are acquainted with T. B. Moses, and whether you know where he lives.

Ans. He was my neighbor for 10 years and I know where he lives.

Int. 25. Whether or not you have seen him within the last two weeks and whether he said anything to you about this land; and, if so, what did he say?

(Objected to.)

Ans. Yes; I have. Yes; he said something about that land. He wanted to know my opinion about it, and wanted to know if it was wet—if there was standing water there.

Int. 26. How did you happen to meet on that occasion, and where was it?

Ans. He came on purpose to my house.

Int. 27. What did he first say to you upon the subject of this land at this time?

(Objected to.)

—. He said there is a process going on about that land and that they did ask me as a witness, Don't you think there is standing water on this land at times—pointing to the lowest part of the land? That is the first question he asked.

Int. 28. Please proceed and state all that was said by him to you and all that you said to him in reply in that conversation.

(Objected to.)

Ans. I told him, Mr. Moses, don't you know that since I and my boy dug a ditch or drain to the culvert—since that I have
261 seen no standing water there at no time. Then I showed him the hole I dug to find water for my cows—what kind of hard-pan soil there was—without success of finding water.

Int. 29. When did this interview take place?

Ans. I think about within three weeks; I cannot say exactly.

Int. 30. Were you upon the land?

Ans. We were walking from my land through that land.

Int. 31. When did you and your son dig the ditch or drain you have spoken of?

Ans. Eight or ten years ago; I could not say.

Int. 32. Have you bought land in this neighborhood; and, if yea, how often and how much?

Ans. I bought my land close to it at two periods; once about eleven years ago and the second about five years ago; I think about 13 acres altogether.

Int. 33. Have you sold any land in this neighborhood; and, if yea, how often and how much?

Ans. Yes; I did twice; two lots at the first time and two lots at the second time.

Int. 34. Whether or not you have attended auctions of land and known of sales of land and the prices they brought in this neighborhood.

Ans. Yes; I did.

Int. 35. Do you know the value of the lots of land shown on plans, "Exhibit A, Moses?"

262 Ans. I think I do.

Int. 36. State the same.

Ans. I would say from 5 to 10 cts. per foot.

Int. 37. Looking at said plan and noticing the lots colored blue, state what valuation you would place upon them separately and not as a whole.

(Objected to.)

Ans. I could not do that. Each man has his taste.

Int. 38. What, in your judgment, is the value of the lots fronting on Beach and Poplar St.? I mean those colored blue.

(Objected to.)

Ans. Well, I could not say; that is taste. One likes this and another likes another better.

Int. 39. When did you make the sales of your own land that you have spoken of and where were the lots situated?

Ans. Two lots about five years ago and two lots this year, situated on Beach St.—all.

Int. 40. How near the land shown on "Exhibit A?"

Ans. Two lots bounding on this land; others adjoining these lots.

Int. 41. What price did you receive for those sold this year?

Ans. Five cts. per foot.

Int. 42. What did you receive for those sold five years ago?
Ans. They brought eight cents.
Int. 43. What do you know, if anything, about the quality
263 of gravel on these lots shown on "Exhibit A?"
(Objected to.)
Ans. I think the price is about 25 cts. per load; kind of hard pan mixed with clay.
Int. 44. What do you know, if anything, in regard to the demand for this kind of gravel in that neighborhood?
Ans. There must be a demand for it, as they are laying out new roads just where the gravel is.
(Objected to.)
(Adjourned.)

BOSTON, *Sept.* 11, 1883.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 45. On which street—James or Charles—is this gravel bank?
Ans. It is on Charles St.
X Int. 46. Is it on that portion of Charles St. towards your house?
Ans. My house lays just in the middle of Charles and James St.
X Int. 47. Is the gravel bank nearer the line separating your house from this Page subdivision or nearer Poplar St.?
Ans. It is hardly 50 ft. distant from my line.
X Int. 48. Isn't the land very steep in that place?
Ans. The steepest on the whole place.
X Int. 49. Isn't the land too steep to run a plow there?
264 Ans. No, sir; we plow on my own land—that is just as steep as this is—and mow with a mowing machine.
X Int. 50. It is a side hill, isn't it?
Ans. Yes; it is a great blessing to the whole land, because it keeps off the north wind.
X Int. 51. The portion of the land on Beach St. near your house is also a side hill, sloping towards the centre?
—. Yes; but sloping very little.
X Int. 52. This subdivision of the land at the northerly portion of Poplar St. also slopes toward—to the center of the subdivision?
Ans. Not the whole distance. In the middle it slopes eastward, towards the culvert.
X Int. 53. The southerly portion, on Poplar St., also slopes toward the culvert?
Ans. Yes.
X Int. 54. From Charles St. in the vicinity of the gravel bank there is a rise of 40 feet to the line of this subdivision, is there not?
Ans. I could not say. I never did measure it, but I would say it might be about that.
X Int. 55. Isn't there a culvert running under Beach St.?
Ans. Yes, sir.

X Int. 56. Doesn't the water run through this culvert onto the Page subdivision from the land on the south of Beach St.?

Ans. It does.

X Int. 57. The water from this Beach-St. culvert flows on the surface of this Page subdivision, does it not?

265 Ans. Not exactly; part of it is open drain, and across James St. I made a culvert of railroad sleepers, but that is almost caved in now.

X Int. 58. After it leaves this drain does it then flow over the land?

Ans. There is a short distance, not over twenty feet, near the ditch.

X Int. 59. The ditch you refer to is the Poplar-St. ditch?

Ans. Yes, sir.

X Int. 60. The Beach-St. culvert drains quite a large section of country, does it not?

Ans. Yes, sir; it drains half of mine.

X Int. 61. Does it drain other land than yours?

Ans. No, sir; for after the middle of mine the water falls westwards.

X Int. 62. When you built your house they used to call it the swamp or some such name, didn't they?

Ans. The musk-rat hole.

X Int. 63. Didn't you have to drain this?

Ans. Yes, sir.

X Int. 64. Part of it was drained onto the Page subdivision, wasn't it?

Ans. It ran of itself across the land without a drain.

X Int. 65. When you stand on Poplar St. at the lowest part of this Page land, beside the culvert when the water runs in the ditch, can you see over the top of Poplar St.?

266 Ans. Yes; the ditch is a great deal deeper than a man. No; you cannot.

X Int. 66. Before you made that ditch which you spoke of above didn't the boys skate there in winter?

Ans. Yes; they did, and they wanted to after I dug the ditch, but I stopped them. Yes; they wanted to do that again and stopped the ditch, and I would not allow it.

X Int. 67. If the culvert was stopped up how big a pond would it make?

(Objected to.)

Ans. I have seen it once when the water broke itself through Poplar St. It was after an extreme thunder-storm. It was two or three feet deep.

X Int. 68. At that time did it make a large pond?

Ans. No, sir; only a small strip left and right, near the ditch.

X Int. 69. Are the springs that you spoke of near the center of this Page subdivision?

Ans. One is, and the other is on the north side hill, nearer Poplar street than my land.

X Int. 70. Do you sometimes water your cows there?

Ans. Very seldom. There is seldom water enough there.

X Int. 71. Have you made springs there by setting a tub in the ground without any bottom in it?

Ans. I made a hole near the spring and put a tub in it.

267 X Int. 72. Is the whole Page subdivision enclosed?

Ans. Not sufficient to have cows in alone without care.

X Int. 73. Do you mean that the fence is broken down in places?

Ans. Yes; it is altogether not strong enough.

X Int. 74. Do you consider your land where your house is better than this land?

Ans. No, sir; I do not.

X Int. 75. The land you sold was high land on Beach St., wasn't it?

Ans. Yes, sir.

X Int. 76. It was a good building lot, wasn't it?

Ans. Yes, sir.

X Int. 77. That land was higher than this property?

Ans. Yes; it was.

X Int. 78. Was that land better than this land?

Ans. No, sir; for it falls off toward the north.

X Int. 79. Do you know anything of any auction sales of this land or attempted auction sales?

Ans. Yes, sir; I saw it, but had no time to stop and see what price they would bring.

X Int. 80. Were there many people there?

Ans. I can't say exactly; 50 or 80.

X Int. 81. When was this?

Ans. Three or four years ago. My memory is poor.

X Int. 82. Do you remember of any other auction sales except this once?

268 Ans. Yes; there was, but I cannot tell what came out of it.

X Int. 83. When was this?

Ans. It was one or two years later.

X Int. 84. How many people were there?

Ans. I think that it was in a very hard time, and there was not ½ as many people there as at the first time.

X Int. 85. Do you know of any sale or attempted sale since that time?

Ans. No, sir.

X Int. 86. Is gas used in your vicinity?

Ans. Not close to it.

X Int. 87. Are there any gas pipes in the street in your neighborhood?

Ans. I have seen gas pipes laid, but haven't seen gas burned.

X Int. 88. In what streets have you seen pipes laid?

Ans. I could not tell exactly—it was near Washington St.—some time ago.

X Int. 89. How far from your house?

Ans. It may be a mile.

X Int. 90. How near are the grocery stores?

Ans. Within 10 minutes' walk—about ¾ of a mile.
X Int. 91. How far are you from public schools?
Ans. I should say ¾ of a mile, I should think.
X Int. 92. How far from churches?
Ans. The same distance.
269 X Int. 93. What taxes do you pay on your 13 acres, with improvements?

(Objected to.)

Ans. I did not look at the tax bill, but, I think, about $60 last year.
X Int. 94. Do you remember the rate?
Ans. No.
X Int. 95. There are low lands in this vicinity, are there not?
Ans. I could not call it low lands.
X Int. 96. Is there a large body of low lands opposite the Clarendon Hill station?
Ans. Yes; low land, but not marshy.
X Int. 97. Isn't there 100 or 200 acres there?
Ans. I guess so.

Direct examination resumed:

Int. 98. You have been asked a good many questions about the drains upon and connected with this land; do you know whether this Page subdivision can be drained perfectly at all seasons of the year or not?
Ans. Yes, sir; it can be drained perfectly very easy. I will drain it three feet deep to the lowest point for $25.

(Objected to.)

Int. 99. You have been enquired of on the cross-examination with regard to the location and quality of the land you own on Beach St. At what price do you hold it and what is the lowest price per foot at which you would sell it?

(Objected to.)

270 Ans. I would sell no more now, since they have deeded the Bussey farm over to the city of Boston for a public park. I will hold it longer. Between 8 and 10c. per foot.

Cross-examination resumed:

X Int. 100. When you said you would ditch this land for $25, did you mean a ditch running to this culvert, or did you mean that you would put in a culvert and ditch it for $25?
Ans. I mean an open drain or ditch from the lowest part of the land to the Poplar-St. culvert.

ERDMAN HEMMAN.

Attest: JOHN G. STETSON, *Examiner.*

271 *Deposition of Daniel Eldridge.*

BOSTON, *Sept.* 11*th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:'

Int. 1. What is your name, age, residence, and occupation?

Ans. Daniel Eldridge; 41; Boston; I am secretary of three co-operative banks in Boston and superintendent of the Wells Memorial Institute of Boston.

Int. 2. In what part of Boston do you reside, and how long have you resided there?

Ans. Ward 23, corner of Metropolitan Ave. and Poplar St., Clarendon Hills, within about 500 feet of the land in this suit. Twelve years.

Int. 3. How often have you seen this land for the last five years, and how near have you been to it when you saw it?

Ans. On an average of once *of* fortnight, and probably about ½ of the times I absolutely crossed the lands and at other times passed along its entire frontage on Poplar street, and probably two or three times a year have passed along the entire frontage of Beach St.

Int. 4. Please examine the plan marked Exhibit B, & also the plan marked "Exhibit A, Moses," and notice the lots marked in blue. State whether or not the said lots have been covered by water; and, if so, which, and when and what parts of them, when you have seen them.

Ans. Only a few of them, and those in the central easterly
272 portion of the division; every spring, when the snow melts and there are heavy rains.

Int. 5. Do you know anything about the culvert which crosses Poplar street, and whether it is in order or not?

Ans. I do. It is not in order, being choked at its mouth by debris.

Int. 6. What is the cause of water accumulating on some of the lots, as you have mentioned?

Ans. Insufficient outlet of the culvert, from the fact of the debris and the raising of the grade of Poplar St.; the two combined.

Int. 7. Whether or not you are acquainted with the price of lands in the neighborhood of Clarendon Hills, and state what knowledge and the source of your knowledge on that subject.

Ans. I am informed by one of the owners of the unsold lots in this Page subdivision and others that those lots are held at prices ranging from 6 to 12 cents per foot. One lot of this Page subdivision, near the northeast corner, fronting on Poplar St., was purchased about seven years ago by a Mr. Rogers, and, to the best of my knowledge and belief, he paid 10 cts. per foot for it, and erected a dwelling-house thereon. Further, I sold a house lot, within about 800 feet of the land in question, for 10 cts. per foot.

Int. 8. Whether or not during your residence at Clarendon Hills you have known of the sales, public and private, of lands in

273 that neighborhood and the prices at which they have been sold.

Ans. I did not attend the auction sales, and do not now recall the prices obtained. I have very little knowledge, except as I have stated.

Int. 9. Do you know or have you heard the prices at which lands generally are held in that neighborhood and the prices at which they have been sold when they were sold at private sale?

(Objected to.)

Ans. The land generally is held at prices ranging from 5 to 12 cents per square foot.

Int. 10. What do you know, if anything, in regard to the quantity of gravel on these lots and the price at which gravel sells in this neighborhood?

Ans. In the northerly portion of the Page subdivision is a bed of gravel, from which the city has taken gravel, but at what prices I do not know, nor do I know the market price of gravel.

Int. 11. Are you familiar with the vicinity of the Clarendon Hill station and Dale street from said station to Poplar St.? And, if yea, state the elevation of these lots as compared with land at said station and also at the house of T. B. Moses, on Dale St.

Ans. I am. Roughly estimated, having no knowledge whatever of engineering, I think the Page subdivision 100 feet higher than the land at Clarendon Hill station. I should say that the lowest point on the Page subdivision was from ten to fifteen feet
274 above the chimney of Mr. Moses' house.

Int. 12. Whether or not any changes have taken place or any improvements been made in this neighborhood within the last five years affecting the value of this property; and, if so, please state the same fully.

Ans. One double house is now being erected directly opposite the Beach-St. line, probably worth, when completed, $3,000; three new houses on Dale St., the most valuable of which cost about $7,000, on the westerly side of Dale St. and above Mr. Moses house; one building on Burleigh St., within 2,000 feet of the centre of the Page subdivision; one on Metropolitan Ave., dwelling-house, costing about $1,800; another on Metropolis Ave., now in process, within one thousand feet of the tract, probably worth, when complete, $3,500; two upon Poplar St., probably worth $2,000 each. In regard to other improvements, the city has paved the gutters — keeps the streets in good order; has put in water, the pipes for which run along a portion of the Poplar-St. front and provided with a hydrant at that point. There have been additional lamps put up in Dale St. and Beach St. recently. We have a fire alarm. I think it is about 500 feet from the land; also, at same point, letter box and hydrant.

(Objected to.)

Int. 13. What do you know, if anything, in regard to the R. R. accommodations to this locality?

Ans. The trains have been increased in number. We have
275 in all about 17 each way a day. The trains have been increased within 5 years and the fares have been reduced within the last year; an additional inward Sunday train in the morning within a year.

Int. 14. Whether or not there has been any change in the school accommodations; and, if so, when and what.

Ans. The city built a large brick school-house at Roslindale (the Charles Sumner school), I think, within five years. It is a strong mile from the land in question. In addition to that, the city did establish a primary school within 2,000 feet of the centre of the Page subdivision, and opened the same yesterday.

Int. 15. What is the principal street running from Roslindale to Hyde Park through Clarendon Hills?

Ans. Poplar St., which, continuously with West St., forms a direct line there.

Int. 16. What is the general description and character of the population in the neighborhood of this land, and what is the general character of the locality as a place of residence?

Ans. Clarendon Hills, as a village, is composed largely of Americans and a few Germans—the latter known as the better class of Germans; no Irish families; desirable as a place of residence because of its convenience to the depot and its being part of the city, which guarantees improvements.

Int. 17. What portion of the residents of the neighborhood, if any, own the houses they live in?

Ans. A large majority.

276 Int. 18. How many dwelling-houses are there within 2,000 feet of this land?

Ans. Between 30 and 40.

Int. 19. How long does it take you to walk from your house to the depot at Clarendon Hills?

Ans. About 6 minutes, because it is descending ground nearly every foot of the distance.

Int. 20. In going to the depot at Clarendon Hills by carriage, how far is it, and what street or streets would you take to go there?

Ans. Had I a sick person, unable to walk, I should drive the carriage by Poplar street to Canterbury St.; thence across the B. & P. R. R. to Hyde Park Ave., to Metropolitan Ave.; thence by it a few rods to the Clarendon Hills station; but if the person were able to walk I should drive down Dale St. to the line of the B. & P. R. R., nearly opposite the station; allow the person to disembark and pass through an upright opening in the fence; thence across the track to the station, the opening being one of three openings placed there by the B. & P. R. R. Co. for the convenience of passengers.

Int. 21. What street or streets do the people of the neighborhood take by carriage to go to the said station to take the cars?

Ans. As a matter of fact, the present custom is to drive down Dale St. and also Metropolitan Ave.—which latter nearly joins the former at the R. R. line—and allow the parties to disembark

and pass through openings in the fence, as indicated in previous answer.

277 Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 22. Were you one of those who petitioned to have this fence removed?

Ans. I was.

X Int. 23. It is an inconvenience, is it not?

Ans. It is.

X Int. 24. Is there any planking across the R. R. track from this opening to the station?

Ans. No, sir.

X Int. 25. How many tracks do you have to cross?

Ans. Three; but the trains can be seen nearly a mile in one direction and about ½ a mile in the other direction.

X Int. 26. How far from your house is gas used in the city limits?

Ans. I am uncertain, but quite a number of houses were piped for gas when built.

X Int. 27. State, approximately, the distance.

Ans. A mile and a quarter.

X Int. 28. Did Mr. Rogers have the choice of lots on this Page subdivision when he purchased the one you referred to?

Ans. I don't know.

X Int. 29. Isn't it one of the best lots?

Ans. Yes, sir; but there are a large number of others equally as good.

X Int. 130. Was the gravel you spoke of taken out of the side hill?

Ans. Yes, sir.

278 (Witness says: I have some additions to make to the answer to question in regard to improvements. The B. & P. R. R. Co. have been recently petitioned by the residents of Clarendon Hill to erect and maintain a shed on the westerly side of the tracks for the convenience of passengers, and the lumber for the same is now upon the ground.)

DANIEL ELDREDGE.

Attest: JOHN G. STETSON, *Examiner.*

279 *Deposition of George H. Homer.*

BOSTON, *Sept. 11th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

Ans. George H. Homer; 41; Roslindale, Mass.; photographer.

Int. 2. Please state where you live, what street, and how far from

the estate known as the Page subdivision and which is shown on plan marked "Exhibit A, Moses."

Ans. Corner of Metropolitan Ave. & Poplar St., Roslindale; I should think from 8 to 900 feet.

Int. 3. How long have you lived there?

Ans. Six years.

Int. 4. How often for the last six years have you seen the land known as Page's subdivision, and how near have you been to it on those occasions?

Ans. I have seen it once or twice a week during the last six years and I have been across it twenty-five times.

Int. 5. Please describe the appearance of this land and state especially what its condition has been in regard to the land having water upon it.

Ans. The natural depression of the land is toward the brook each way and would naturally drain itself.

Int. 6. Whether or not you have ever at any time seen
280 these lots or any of them covered with water.

Ans. I never have.

Int. 7. What knowledge have you and what means of knowledge of the value of lands in that neighborhood? I mean in the neighborhood of Clarendon Hills and Roslindale; state the same fully.

Ans. Simply from sales and what people ask. I know of one lot of land having been sold at 10c. per foot very near this land.

Int. 8. Do you own the estate where you live; and, if so, how long have you owned it?

Ans. I do; six years.

Int. 9. Did you buy the estate with the house on it?

Ans. I did.

Int. 10. Where is the land situated that you speak of as having been sold for 10 cts. per foot?

Ans. Near the corner of Charles St.

Int. 11. Please look at the plan marked "Exhibit A, Moses," and, directing your attention to the lots marked in blue, will you state what, in your judgment, is the value of said lots per foot, either as a whole or as specifying a price for each lot or groups of lots?

(Objected to.)

Ans. 6 to eight cents.

Int. 12. Whether or not there is any difference, and, if any, what, in the value of said lots at this time and September of last year—*i. e. that is*, one year ago.

281 Ans. I should say they were worth fully as much now as then.

Int. 13. Please state whether if any, and, if any, what, improvements or changes have been made in this neighborhood within the last five years affecting the value of these lots. Please state the same fully.

Ans. There have been 6 to 8 houses built; people have been improving their places; Cochituate water has been brought into the place; fire alarms established; two deliveries of mail matter per

day; post-office box for the collection of letters; schools just established by the city of Boston; ladies' room at the depot at Clarendon Hill is being refitted and opened to the public; street lights established by the city; a general air of thrift and comfort surrounding the place.

Int. 14. What is the general character of this neighborhood and what class of people occupy the houses there?

Ans. Good business men.

Int. 15. What proportion of the residents there own the houses they live in?

Ans. A large proportion.

Int. 16. Whether or not there have been any changes in the R. R. accommodations at Clarendon Hills; and, if so, what?

Ans. More trains than ever; lower fares.

Int. 17. How many houses are there within 2,000 feet of these lots?

282 Ans. A large proportion of the houses in the neighborhood are within 2,000 feet of these lots.

Int. 18. Please state what class of houses they are—that is, about what they cost and what their general appearance is.

Ans. There has been a house built there recently at a cost of $7,000, on Dale St.; comfortable.

Int. 19. What is about the value of the houses and lots in that locality that you have referred to—I mean the general or average value of the estates?

Ans. 3,500 to 10,000.

Int. 20. Whether or not this is a popular and desirable locality for dwelling-houses, or how otherwise?

—. The best within the radius of ten miles of Boston for health. That means desirable, I suppose.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 21. Where is the brook you spoke of?

—. About the center of the land.

X Int. 22. How large a tract of country does it drain?

Ans. I could not say.

X Int. 23. What is your means of knowing of the sales you spoke of?

Ans. I know by parties buying to build on and by writing to parties who have owned land, what their replies have been, when I wanted to buy myself.

X Int. 24. Do I understand that the parties told you the price?

Ans. Yes, sir.

GEORGE H. HOMER.

Attest: JOHN G. STETSON, *Examiner.*

283 *Deposition of Thomas W. Davis.*

BOSTON, *Sept. 11th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

—. Thomas W. Davis; 54; Boston; city surveyor.

Int. 2. Please give the grade level or elevation of Dale St. at its junction with Poplar St. in West Roxbury.

Ans. I will give it according to a plan of the laying out of Dale St. by the city of Boston. It is about 148 feet above the city base, which is an arbitrary line or datum from which all levels are taken and which is about mean low water.

Int. 3. Please give the elevation on said Dale St. at the boundary line between the city of Boston and Hyde Park.

Ans. About 60 feet. I drop fractions.

Int. 4. Please give the elevation of Dale street at the angle of the bend in said street or as near the center of the bend as you can.

Ans. About 88 feet.

Int. 5. Please state the elevation of said street at a point opposite the house of Theodore B. Moses.

Ans. This plan does not show Mr. Moses' house, but it is nearly opposite the bend before spoken of. It is a little below, I think—that is, towards the depot.

Int. 6. What is the general character of the descent from Poplar St. to the Hyde Park line?

284 Ans. It is generally a regular descent; not quite as steep at the bottom of the hill as it is near the top—near Poplar St.

THOS. W. DAVIS.

Attest: JOHN G. STETSON, *Examiner.*

285 *Deposition of Samuel Hitchborn.*

BOSTON, *Sept. 11th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

Ans. Samuel Hitchborn; 48; Boston; auctioneer and real estate broker.

Int. 2. Whether or not at any time you or the firm to which you belonged have sold at auction lots of land situated at or near the corner of Beach and Poplar streets, in West Roxbury, and subdivided by streets James & Charles.

Ans. We sold at Clarendon Hill.

Int. 3. For whom?

Ans. For Mr. C. J. Page.

Int. 4. Have you the record of that sale?

Ans. Yes, sir.

Int. 5. Will you state when said sale took place and where?

Ans. In 1874, in July, and on the premises.

Int. 6. Will you please state the number of each lot sold, the price it brought, and the name of the purchaser?

Ans. Lot No. 17, G. W. Wilson, 7½ cts. per foot; lot 15, Louis Aldrich, 8 cts. per foot; lot 18, Patrick Mesham, 7½ cts. p'r foot; lot 19, John Cooper, 8 cts. per foot; lot 20, John Cooper, 8 cts. per foot; lot 14, George H. Wardsworth, 8 cts. per foot; lot number 6, C. L. Allen, 9 cts. per foot; lot No. 7, C. L. Allen, 8¾ cts. per
286 foot; lot number 2, O. Sharp, 10¾; lot 34, Carl Lehnard, 12 cts. a foot; lot 32, R. H. Kerr, 8¾ cts. per foot; lot 31, E. O. Goodwin, 8¼ cents per foot; lot 30, Geo. H. Wardsworth, 8 cents per foot; lot 33, George Harris, 9½ p'r foot; lot 5, T. Reiley, 8 cents a foot; lot No. (defaced), Dr. Little, 9 cts. per foot; lot 3, E. R. Merriam, 8½ cts. p'r ft.; lot 4, Geo. H. Wardsworth, 7½ per ft.

Int. 7. Please state the terms of sale as fully as you can give them.

Ans. Boston, July 1, 1874.—Conditions of sales of lots of land at Clarendon Hills: Twenty-five (25) dollars to be paid at sale; ¼ part of the whole purchase-money to be paid on the delivery of the deed; balance can remain on mortgage; power of sale for three years, at 7% interest; taxes for the present year to be paid by the purchaser; deed to be ready at the office of George R. Hitchborn & Co., No. 63 Court street, on or before 20 days from the date of sale. These terms were announced at time of sale.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 8. Will you please state methods which are sometimes adopted in Boston and vicinity by which bogus auction sales are made of property in order to increase the value of the property?

Ans. I don't see how I can answer such a question as that.

X Int. 9. Do you think that there are such things as bogus auction sales in this vicinity?

287 Ans. I think there is property put up and bid in, because it does not bring as much as the owner wishes.

X Int. 10. Were all these lots put up, bid on, and knocked down to the parties named above?

Ans. They were.

X Int. 11. Were there any that were not sold—I mean those that were advertised for sale?

Ans. There were lotes advertised for sale that were not sold.

X Int. 12. Were all that were offered sold?

Ans. I think they were.

X Int. 13. Are you acquainted with Otto Sharp, a real estate man?

Ans. I am not.

X Int. 14. Do you remember who the O. Sharp was whom you spoke of as one of the buyers?

Ans. I do not.

X Int. 15. From your own personal knowledge, do you know whether any or all these sales were *bona fide* sales?

Ans. Mr. Page drew the deeds. I had nothing to do with the papers.

X Int. 16. What Mr. Page?

Ans. C. J. Page.

X Int. 17. He is connected with the Metropolitan Land Co., is he not?

Ans. I don't know. He owned this land.

X Int. 18. Who was the auctioneer at these sales?

Ans. My father sold and I kept the account.

SAM'L HITCHBORN.

Attest: JOHN G. STETSON, *Examiner.*

288 *Deposition of Albert Gates, Jr.*

BOSTON, *Sept.* 12, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Albert Gates, Jr.; 37; Boston; real estate & mortgage broker and insurance agent.

Int. 2. How long have you been engaged in the business of real estate broker and where is your office and how long has it been where it is now?

Ans. I went in business for myself Oct., 1872. My office is 40 Water St., Simmons building, Boston. I think since 1873 or 1874 that I have been in the building.

Int. 3. Where have the properties been located principally which you have handled as broker or otherwise during this period?

Ans. Boston and vicinity.

Int. 4. Please examine plan marked Exhibit A, Moses, and say whether you are acquainted with the premises thereon shown; and, if yea, for how long?

Ans. I am; since 1873.

Int. 5. Please direct your attention to the lots designated by blue coloring and state the value of said lots.

Ans. I am not prepared to state the value of the lots. I can state what I sold them for in exchange May 1st, 1873. In exchange
289 I sold 210,000 feet, which is the exact property, excepting one lot, for 10 cts a foot.

Int. 6. Who was at that time the owner of said land, and with whom was the exchange made?

Ans. Charles J. and James H. Page were the owners; Harvey A. and George O. Whiting the purchasers.

Int. 7. Whether or not you have had any other transactions in regard to this land; and, if yea, what, and when, and at what price was it sold, if it was sold.

Ans. Well, I negotiated a mortgage upon these lots. There was

an auction sale, or advertised to be sold, in which I took a part, but no sales were made.

Int. 8. Whether or not you acted as broker in any other sale or exchange of this land; and, if yea, state all the facts in regard thereto.

Ans. July 29th, 1876, I sold it in exchange to Mrs. Hanbury for about $13,000.

Int. 9. Who was the other party?

Ans. Harvey A. and Geo. O. Whiting.

Int. 10. What, if any other, experience as broker you have had with other property in the vicinity of the property above referred to.

Ans. July 1, 1873, I sold, in exchange for the Pages, 122,889 feet on the other side of Beach St., to John Cooper, for 16 cts. a foot, he mortgaging back to said Pages said land for about 10 cts. per foot.

290 Int. 11. Whether or not you have sold, exchanged, or mortgaged, as broker, any other lands in that vicinity.

Ans. I sold lot, I think, 65 on Beach St., containing 6,000 feet, for $375 *dollars* cash.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 12. Do you keep books, memoranda, or papers showing the terms of your different negotiations; and, if so, are they at your office?

Ans. I think I have preserved some of the brokers' agreements concerning the above-mentioned transactions; others I have none. I don't keep a set of books. The agreements show the transactions.

X Int. 13. In reference to testimony that you have given this morning, is it from memory or from these agreements?

Ans. From both.

X Int. 14. Is the memorandum from which you have refreshed your memory original entries?

Ans. No, sir.

X Int. 15. When did you first meet Mrs. Hanbury in business transactions?

Ans. I think within a year before the sale; July, 1876.

X Int. 16. What was your business with her then?

(Objected to.)

291 Ans. I was asked by a mutual friend to call at her house in Cambridge—introduce myself—in reference to taking her estate in Cambridge for sale, 21 Forest St., corner of Oxford St.

X Int. 19. Did you carry through negotiations by which Mrs. Hanbury became the possessor of the Page subdivision in exchange for this Cambridge property?

Ans. Yes, sir.

X Int. 18. Was this property in Cambridge incumbered?

Ans. The real estate was.

X Int. 19. How much was the incumbrance?

Ans. $6,000.

X Int. 20. Were the lots which she took in exchange free of encumbrances?

Ans. They were.

X Int 21. Did you act for Mrs. Hanbury or have control of this Page subdivision after this exchange?

Ans. Yes.

X Int. 22. Aside from negotiating the mortgage, was the property in your hands?

Ans. I have no recollection of its being so, except the auction sale referred to.

X Int. 23. Was the first attempt made to sell this property by Mrs. Hanbury at the time of this auction sale?

Ans. Well, I don't know.

X Int. 24. Do you know of the property being in the hands of any broker before this auction sale?

Ans. Not that I have the least remembrance of.

292 — Int. 25. When did she come to you in reference to this auction sale?

Ans. I should say within a month or two before it was advertised.

X Int. 26. Did you manage this sale?

Ans. I was associated with the auctioneer as regards this special sale.

X Int. 27. How was it advertised?

Ans. In the newspapers and by posters.

X Int. 28. Was it properly advertised?

—. I should say yes.

X Int. 29. What were the conditions of the sale?

Ans. I don't remember.

X Int. 30. Was the rate to be absolute?

Ans. I don't know.

X Int. 31. What papers was this sale advertised in?

Ans. I don't remember. I think the Herald was one.

X Int. 32. Were you present at the sale?

Ans. I was.

X Int. 33. How many of the lots were offered?

Ans. I don't remember.

X Int. 34. Were there many people at the sale?

Ans. Considering the dullness of land sales, we thought we had a fair number present.

X Int. 35. For how long did your management of this property last after this sale?

Ans. To the best of my recollection, it ended about that time.

X Int. 36. Was the Page subdivision unincumbered at the time of this sale?

293 Ans. I think the $800 mortgage remained still unpaid, but was overdue, and arrangements had been made with the mortgagee in case a sale should be made.

X Int. 37. Was you agent of the Page sale which you spoke of above as being connected with—I mean the Page sale to Whiting?

Ans. I was.

X Int. 38. Was it a sale for money or an exchange; and, if an exchange, what?

Ans. It was an exchange for hotel property in New Hampshire.

X Int. 39. Was the property taken in exchange unincumbered?

Ans. I don't remember.

X Int. 40. Do you know what connection Mr. Page had with the Metropolitan Land Co.; was he its treasurer?

Ans. I think he is now, but never knew he was then.

X Int. 41. Will you please produce the posters & the advertisement which you put into the newspapers of this sale which you conducted for Mrs. Hanbury?

Ans. I think the auctioneer has them. The only way I could produce the advertisements would be to go to the newspaper office and get them. I will try to find one of the posters and produce it.

Direct examination resumed:

—. What other property, if any, was conveyed by Mrs. Hanbury to the Whitings, in the transactions which you referred to, besides the house and lot corner of Forest & Oxford St.?

(Objected to.)

Ans. As I remember it, most of the furniture and carpets in said house, piano, and carriage.

A. GATES, JR.

Attest: JOHN G. STETSON, *Examiner.*

294 *Deposition of Samuel F. Rugg.*

BOSTON, *Sept. 12th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

Ans. Samuel F. Rugg; 49; Cambridge; auctioneer and real estate agent. I have an office in Boston also.

Int. 2. Are you acquainted with Mrs. Anna Hanbury; and, if yea, when did you make her acquaintance?

Ans. I think it was in the early summer of 1874 or 1875.

Int. 3. Whether or not you had any business transactions with her at or about that time; and, if yea, then state what they were.

(Objected to.)

Ans. I sold Mrs. Hanbury a house at the corner of Forest & Oxford streets—21 Forest, cor. of Oxford—in Cambridge.

X Int. 4. Who was the owner of said house, and for whom did you act in the transaction?

Ans. Mr. William Frost was the owner, and Mrs. Hanbury wanted a house. I introduced her to Mr. Frost. We went together and looked at the house. It was purchased by Mrs. Hanbury, and Mr. Frost paid me a commission for selling.

Int. 5. Do you know, and, if so, state, the price she paid for said estate.

295 Ans. $11,000. She bought it subject to a mortgage of $6,000. She was to pay $5,000 in cash, and I was present when it was paid; I think it was in money.

Int. 6. How near did you live to this estate and how often did you see it after the sale, while Mrs. Hanbury occupied it?

Ans. Five minutes' walk. Very frequently. I think it was two years Mrs. Hanbury lived there.

Int. 7. Whether or not Mrs. Hanbury made improvements upon said estate; and, if any, state what.

Ans. She raised the grade very extensively; planted trees and changed the outward appearance very materially, at quite an expense. She made changes inside, and spent a great deal of money on the place, in furnishing and otherwise.

Int. 8. Can you mention any other specific improvements or changes she made on the land or house or interior of the house?

Ans. I should say I had answered that in the previous question.

Int. 9. I will direct your attention to the furnace and cellar.

Ans. Now that my memory is refreshed, I think she had trouble with the furnace; I think she had a new one put in.

Int. 10. I direct your attention to the matter of walks, cess-pool, and the size and character of the trees and shrubs she had put upon the premises.

296 Ans. New sidewalks were put down; edge stones were reset; concrete walks inside; the drainage was overhauled thoroughly, and the cess-pools and water-closets and the whole system of drainage was improved, and the shrubs and trees she put out were extraordinary. She contemplated buying a lot of land covered with a forest of trees, opposite, for the children to play in.

Int. 11. Whether or not the price she paid for said estate was a reasonable one.

Ans. I should say it was.

Int. 12. What was this estate taxed for, if you know, for the years 1875 and 1876?

(Objected to.)

Ans. $10,500, by the assessors' books at Cambridge.

Int. 13. To what amount, according to your best judgment, did Mrs. Hanbury increase the value of the estate during the two years she owned and occupied it?

Ans. She spent $4,000 upon the place, I should say—$4,000 or more, barring the furniture. I am talking of the real estate.

Int. 14. What do you know in regard to the furniture that was in her house at the time she exchanged the house and furniture to the Whitings?

(Objected to.)

Ans. It was very nice furniture. That takes in everything—curtains, lambrequins, all the paraphanalia of the house—very rich damasks; carpets were very rich.

297 Int. 15. As auctioneer, whether or not you have had ex-

perience in selling furniture and household goods; and, if so, to what extent.

(Objected to.)

Ans. I have sold ever since I have been an auctioneer, for 10 years. I have sold a good deal.

Int. 16. What, according to your best judgment, was the value of the furniture in said house at the time of said exchange?

(Objected to.)

Ans. I should not put it at less than 4,000. I guess it cost more than that. I should put it more rather than less.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 17. Did you ever see Mrs. Hanbury's husband?

Ans. I have.

X Int. 18. Was he in any way connected with any of these transactions spoken of in the direct examination?

Ans. Not as I know of.

X Int. 19. Did you ever see him at this house?

Ans. I have. I think he lived there when he was at home.

X Int. 20. Didn't property in Cambridge decrease in value after the time of purchase?

(Objected to.)

Ans. Not immediately. It weakened.

X Int. 21. Wasn't there a decrease in two years from the date of purchase?

298 Ans. Some.

— Int. 22. Do you know how long the mortgage ran?

Ans. I do not.

X Int. 23. Of your own personal knowledge, did you know at that time of the financial standing of Mrs. Hanbury?

Ans. I did not.

X Int. 24. Have you had any business relation or personal knowledge of her since she sold the house in Cambridge?

Ans. No business relations.

X Int. 25. Have you known anything about her since?

Ans. Not from personal knowledge.

X Int. 26. In this vicinity is five or six per cent. a good rate of interest to pay on money borrowed on mortgage on lands worth double the face of the mortgage?

Ans. It is hard to negotiate loans on unimproved property at that rate. On property that is improved it is a very fair rate of interest.

SAMUEL F. RUGG.

Attest: JOHN G. STETSON, *Examiner.*

299 *Deposition of Edmund A. Macdonald.*

BOSTON, *Sept. 12th*, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation?

Ans. Edmund A. Macdonald; 41; Metropolitan Ave., Roslindale; I am paymaster of Suffolk county.

Int. 2. How long have you resided on Metropolitan Ave., and how far is it from your house to the corner of Beach and Poplar Sts.?

Ans. I have resided continuously for the last seven years, and before that, with the exception of one year, I had lived two years. The distance is about 625 feet from my house to the corner of Poplar St. and Metropolitan Ave., and from that point to the corner of Beach & Poplar St. about 700 feet at right angle.

Int. 3. What means have you had of knowing the prices of land in that neighborhood?

Ans. I have been in attendance at auction sales and have exchanged views with neighbors in reference to their ideas of values.

Int. 4. Whether or not during the period you have mentioned you have known of the sales in the neighborhood and the prices paid for land when it has been sold at private sale.

Ans. No; I have no recollection of private sales.

Int. 5. I do not ask you to state the prices at such sales, but
300 only whether you knew the prices at the time such sales were made or any of such sales.

Ans. I only knew of the current report of the price of such sales as given by my neighbors. I had no knowledge of my own.

Int. 6. Basing your judgment upon the facts set forth in your three last answers, what, in your judgment, is the value of the lots of land marked in blue in the plan shown you, designated as "Exhibit A, Moses?"

(Objected to.)

Ans. I should say from 6 to 12 cts. per foot.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 7. Have you attended any auction sales of this Page subdivision?

Ans. I have not.

X Int. 8. Are you acquainted with the topography of this tract?

Ans. I am.

X Int. 9. Is there not a culvert under Beach St. which drains a large territory to the south?

Ans. There is an old culvert there. My impression is that it is not in use.

X Int. 10. Is there a culvert under Poplar St. draining toward the east?

Ans. I think there is, but that too is clogged. It has not been used for two or three years or more.

EDMUND A. MACDONALD.

Attest: JOHN G. STETSON, *Examiner.*

301 *Deposition of Albert Howe.*

BOSTON, *Sept.* 12, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for def'ts Hanbury and Rorke:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Albert Howe; 69; Boston; auctioneer.

Int. 2. Where is your place of business, and how long have you been an auctioneer?

Ans. My place of business is Brighton; I have been an auctioneer 49 y'rs.

Int. 3. How long has your place of business been in Brighton, and what kinds of property have you been in the habit of selling?

Ans. I have been in Brighton since the 10th day of Oct., 1842; that would be 40 years. I have been in the habit of selling all kinds. I have sold a good deal of real estate.

Int. 4. Do you know the locality known as Clarendon Hills, and whether you are acquainted with the value of land in that neighborhood?

Ans. I do know the locality, and I am acquainted with the value of property there?

Int. 5. Please examine the plan marked "Exhibit A, Moses," and direct your attention to the lots marked in blue, and state the value of said lots per foot.

Ans. I offered these lots for sale June 26, 1879. That was the date we made the sale, I think. I had on these lots, No. 69
302 & No. 73 on the plan, 3 & 4 cents bid, and we bid them in at five.

Int. 6. Will you now state *if* the fair value of these lots, 69 & 73, and also the other lots on said plan that are colored in blue?

(Objected to.)

Ans. Those four there, 77, 78, 79, & 80, I was offered 4 cents a foot for the land, so as to take the gravel off. We stopped the sale then. The price was not satisfactory to Mrs. Hanbury at the time.

Int. 7. Do you mean you had bid at the sale four cents per foot for the land, gravel and all, or 4 cts. per foot for the gravel on the lots, to be taken off and the land to be left?

—. No; the bid was for the land. The man wanted it for the gravel.

Int. 8. Please state what, in your opinion, is the fair value of lots 69 and 73 and 77, 78, 79, and 80 at the present time.

Ans. I should say five cents a foot for those.

Int. 9. Now, directing your attention to the other lots on said plan marked in blue, *and* state what, in your opinion, is their fair

value at this time; and if it was different one year ago, then state also what they were worth then.

Ans. Lots 55, 56, 58, 60, 63, 39, 40, 41, 45, & 47 are worth 3 cents per foot. Yes, sir; they were worth more a year ago. No.
303 35 is worth 8 cts. per foot. It was worth that sum a year ago. No. 1 is worth ten cents per foot. I was offered 6 cts. to start it at Mrs. Hanbury's auction, and she refused it. Lots 27, 28, and 29, and 23 and 24 are not worth so much. They are worth 6 cts. per foot. The remaining four, Nos. 8, 9, 12, and 13, are worth 8 cts. per foot.

Int. 10. What do you know, if anything, and state your source of knowledge, of the value of gravel such as is on these lots in that locality.

Ans. It is worth 15 cts. a load, because I have sold it for that and bought it for that.

(Objected to.)

Int. 11. Describe this gravel—state what kind of gravel it is, if you know.

(Objected to.)

Ans. It is very good gravel for roads.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 12. Why do you say, in answer to question 9, that certain of the lots have decreased in value within a year?

Ans. There has not been quite so much demand for building lots.

X Int. 13. Wouldn't that effect all the lots?

Ans. It would not so much. Along on Beach St. are fine building lots.

X Int. 14. Do you consider that there have been many im-
304 provements in this locality to affect the value of the land within a year, or would the prices remain about the same?

Ans. As far as the improvements — there has been only a chapel built. I should think the prices would remain about the same.

X Int. 15. What were the conditions of sale of Mrs. Hanbury's auction?

Ans. I can't remember, unless I look at my book, whether it was one-third cash or ¼ cash.

(Adjourned.)

SEPT. 13TH, 1883.

(Mr. Howe came in at 10.30 and desired to make the following correction before the cross-examination was continued, and says: The value of the lots was 5 cts. per foot, and they wanted to start them at 3 cts., and we stopped the sale. I refer to lots 55, 56, 58, 60, 63, 39, 40, 41, 45, and 47, as given in answer to interrogatory 9 of the direct examination.)

X Int. 16. Who do you mean when you say we stopped the sale?

Ans. Well, Mrs. Hanbury had the controlling power.

X Int. 17. Was Mr. Gates interested?

Ans. He was interested as far as getting me to sell it.

X Int. 18. Did he have anything to say in regard — stopping the sale, or in any way consulted you?

Ans. I think he did not.

X Int. 19. Was this to be a positive sale?

305 Ans. That is what Mr. Gates told me it would be.

X Int. 20. Do you understand, then, that the land was to be sold to the highest bidder?

Ans. I understood it so from Mr. Gates when I first advertised it.

X Int. 21. Was it advertised so?

Ans. It was.

X Int. 22. Did Mr. Gates have the charge of the sale?

Ans. Till I took hold of it. I was the auctioneer.

X Int. 23. In getting up this sale did you or Mr. Gates or Mrs. Hanbury get up the advertisements and posters—I mean do the advertising?

Ans. I generally write the advertisement myself and then show it to the party.

X Int. 24. Did you show this advertisement to Mrs. Hanbury or Mr. Gates?

Ans. I think I did.

X Int. 25. Was it well advertised?

Ans. It was.

X Int. 26. Was the day good?

Ans. It was.

X Int. 27. Was there a good attendance?

Ans. There was.

X Int. 28. Did you, as auctioneer, have a book-keeper to keep the accounts of the sales and take in the money?

Ans. I did in case there was any money taken.

306 X Int. 29. Who was to attend to that part of the business?

Ans. Mr. Scates.

X Int. 30. Did you have any person present to bid in?

Ans. I did not.

X Int. 31. Did you think any one did?

Ans. I think there was a lady bid in one lot and we stopped the sale.

X Int. 32. In question five you say three and four cents were bid and we bid them in at five. Was it Mrs. Hanbury in person or was it some one for her?

Ans. The lady, as I understood, bid them in for Mrs. Hanbury and we stopped the sale.

X Int. 33. Do you know how many persons were present for the purpose of bidding in Mrs. Hanbury's interest?

Ans. I don't think there was more than one.

X Int. 34. Do you know that there was not more than one?

Ans. I do.

X Int. 35. How do you know it?

Ans. I only know it by Mrs. Hanbury's conversation with this lady.

X Int. 36. Was Albert Gates, Jr., present?

Ans. He was.

X Int. 37. Do you know whether he had any one present and how many to bid in Mrs. Hanbury's interest?

Ans. I don't think he had any.

X Int. 38. How do you know?

Ans. I think he had no one.

307 X Int. 39. Do you know whether Albert Gates, Jr., ever has bidders on puffers in auctions sales which he manages.

(Objected to.)

Ans. Not when I attended.

X Int. 40. Why should he have told you that he did not have by-bidders or puffers at this auction?

Ans. He expressed it at the sale. He said he had no by-bidders after I read the notice of the sale.

X Int. 41. What means, if any, have you of knowing whether there were any *bona fide* offers to start the sale? I mean of your own personal knowledge.

Ans. There were some perfect strangers who, after we had stopped the sale, offered to start some certain lots for less price than I had announced that Mrs. Hanbury would allow, and she refused to go on with the sale.

X Int. 42. Do you mean that they were strangers to you?

Ans. They were strangers.

X Int. 43. You don't know, then, that they were not friends of Mrs. Hanbury or Mr. Gates?

Ans. Mrs. Hanbury and Mr. Gates said that they did not know them.

X Int. 44. Did Mrs. Hanbury tell you then and there that if there was any sale or money paid to keep it and give it to her?

Ans. She did.

X Int. 45. Did you, of your own knowledge, then and there think that she had good reason to make such request?

Ans. I did.

308 X Int. 46. What was the reason?

Ans. Mr. Gates was a little sick.

X Int. 47. What was the matter with him?

(Objected to.)

Ans. He complained of a sick headache.

X Int. 48. Did you on your return say that Mr. Gates was disgracefully drunk, and that Mrs. Hanbury felt very bad about it?

(Objected to.)

Ans. No; I did not say he was disgracefully drunk, but a little mite under the weather, as we call it; not disgracefully.

X Int. 49. Did you get your commission then and there?

(Objected to.)

Ans. I did not. *Have you ever received it?*

X Int. 50. Have you ever received it?

Ans. I have received part.
X Int. 51. How long have you been waiting for your pay?
Ans. I got some of it on the day of sale.
X Int. 52. When did you receive any more of your pay?

(Objected to.)

Ans. About a week ago, I think.
X Int. 53. How much does she owe you?

(Objected to.)

Ans. She owes me a balance of $36.50.
X Int. 54. How much was paid you last week?

(Objected to.)

Ans. Twenty-five dollars.
X Int. 55. Have you any security for what is owed you?

(Objected to.)

Ans. No, sir.
309 X Int. 56. Do you know of Mrs. Hanbury's financial standing now or then?

(Objected to.)

Ans. I do not.
X Int. 57. Are these lots of the Page subdivision all good building lots?
Ans. Yes; they are all good building lots.
X Int. 58. How near are they to a city sewer?
Ans. Really I can't say.
X Int. 59. How near are they to dwellings where gas is used?
Ans. I don't know whether they have got the gas up there now or not; I have not been up there for two years.
X Int. 60. What, in your opinion, is the elevation on the front line, also on the rear line, above the grade of the street, on the steepest lots of this Page subdivision, marked in blue on "Exhibit A, Moses?" And specify.
Ans. Lot- 80 and 79 & 78 & 77 are very high lots; 73 is a good, high lot; 69 also. I don't know as I can say how much higher lots 23 and 24 are than Poplar St.; it is some higher; I would rather not give the elevation; if I was there I could tell.
X Int. 61. Are you sufficiently acquainted with this Page subdivision and the lands adjoining southerly and westerly to state the slope and which way the flow of surface water would be—whether onto this subdivision or off from it? Specify generally.
310 Ans. I would rather say that I was not well enough acquainted with it now to say without looking at it.
X Int. 62. Are you sufficiently acquainted with the drains, ditches, bridges, culverts, &c., to know where they are situated? And, if so, specify.
Ans. I am not.
X Int. 63. How far from this Page subdivision is Clarendon Hill

station, and is there a strai-t and unobstructed street leading there? Please give the name of the street.

Ans. I don't know the name of the street leading down to it. If they have not moved the depot since I was there it is about 3 or 4 minutes' walk down to it. I think that the R. R. put up a fence to stop carriages from crossing the track. Foot passengers could go there to take the cars.

X Int. 64. Did you ever see or know about Mrs. Hanbury's house in Cambridge?

Ans. I did.

X Int. 65. Do you know from Mrs. Hanbury whether Mr. Gates effected that exchange as a broker for Whiting, and that for his services he received one of the lots as commission—that is, Whiting had 28 lots from Page, and 27 were exchanged to Mrs. Hanbury, and Gates received one?

Ans. I never knew anything of it.

311 X Int. 66. Is the circular which I now produce, marked "Exhibit E," one of the posters used to advertise Mrs. Hanbury's auction sale?

Ans. Yes, sir.

"EXHIBIT E." J. G. S., Ex'r.

Positive great sale at auction of 28 valuable house lots at Clarendon Hills, situated on Poplar, Beech, James, & Charles Sts.

Will positively be sold to the highest bidder at public auction on Thursday, June 26, 1879, at 4 o'clock p. m., on the premises, 28 house lots, containing from 6,000 to 10,000 feet each, situated as above, about 5 minutes' walk from the Clarendon Hills station, on the Boston & Providence railroad, near the residences of Albert Hastings, T. B. Moses, Esqs., in the best of neighborhoods, affording opportunities to those in search of moderate cost homes to secure them at the lowest possible price, as this land will be sold without regard to former prices of lots included in this plan, which have been sold at 20 cents per foot.

The owner, a resident of another State, has determined to sell, and no one can afford to neglect to give this sale their attention.

Free tickets to the sale will be furnished, and plan may be examined and full particulars had at office of Albert Gates, Jr., 40 Water street, Boston.

312 $25 required of purchaser on each lot at time of sale.

Trains leave Boston & Providence station, Boston, at 1.15, 2.10, and 2.40 for the sale.

Clarendon Hills, June 12, 1879.

ALBERT HOWE & CO.,
Auctioneers.

X Int. 67. Was the advertisement which was placed in the newspapers the same?

Ans. It was, except that the advertisement in the newspapers con-

tained this additional sentence: "The grass upon the several lots will also be sold for cash."

— Int. 68. Do you know Minor N. Knowlton; and, if yea, when and where did you make his acquaintance?

Ans. He came to my house about a week ago; I have forgotten the date.

— Int. 69. Did you know him before that, and what was the object of his visit there?

Ans. I did not know him before that. He asked me some questions about the land.

— Int. 70. Whether or not you have seen him during your examination as a witness; and, if so, where was he and what was he doing?

Objected to.

Ans. He was sitting here and writing.

ALBERT HOWE.

Attest: JOHN G. STETSON, *Examiner.*

313 BOSTON, *Sept.* 13, 1883.

The witness, Albert Howe, having produced the circular issued for Mrs. Hanbury's auction sale, referred to in this testimony and marked Exhibit E, and having testified as to the advertisements in the newspapers, it is agreed by the parties that Albert Gates, Jr., need not produce the same or be required to further testify as to this matter.

Attest: JOHN G. STETSON, *Examiner.*

314 *Deposition of Russell A. Ballou.*

BOSTON, *September* 14, 1883.

Direct examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

Int. 1. What is your name, age, residence, and occupation.

Ans. Russell A. Ballou; 56; Newton Centre. I have lived in Boston until recently for the last 20 years. I am a dealer in real estate and editor of the New England Real Estate Journal.

Int. 2. For how long have you been a dealer in real estate, and where have your operations principally been, and what has been the extent of your dealings? State generally.

Ans. About 18 years; principally in Boston; to a large extent, probably a million dollars, a large part in unimproved land.

Int. 3. Have you any knowledge, and, if any, what, in regard to the taxation of vacant and unimproved lands in the city of Boston having relation to the price at which such lands are held and sold when they are sold? If you have such knowledge state all you know in relation thereto.

(Objected to.)

Ans. I have some knowledge of the subject according to my experience and observation. Unimproved lands are generally bought and sold at prices considerably above the assessors' valuation at the time. I have bought and sold unimproved land prices varying from 50% to 4 or 500% above the assessors' valuation of the property for that year.

315 Int. 4. Whether or not you can state instances of sales or instances of mortgaging unimproved vacant lands in the city of Boston in which there were variances between such considerations and the assessors' valuation.

(Objected to.)

Ans. I can state some. I could state many by taking time to go to the records. I bought a portion of the Worthington estate in Boston for 6¼ cts. a foot, which at the time was taxed for the most part as farm land, at about 100 dollars an acre. I was knowing to a purchase of a piece of land at what is called the calf pasture, in Dorchester, which the same year was mortgaged, to secure a cash loan, for several times the taxed valuation. I should say not less than 4 or 5 times this present year I signed a release of land on Beacon St., in the Back Bay, which was taxed at from 24 to 27 cts. per foot and sold at cash sale for over 40 cts. per foot, the valuation for taxation being that of the present year.

Cross-examination by CHARLES S. HANKS, Esq., of counsel for complainant:

X Int. 5. Do you know the prices of outlying and unimproved lands was very much higher 8 or 10 years ago than at present in the vicinity of Clarendon Hills?

Ans. I had no transactions there and had no personal knowledge of values then or now.

316 X Int. 6. Is it not a custom of the assessors of Boston to place any lot or separate piece of land at a minimum price of a hundred dollars as assessed to avoid fractions in the computation of taxes in cases where the values are much less?

Ans. I have no knowledge of the custom of the assessors in that regard. If they should assess my property in that way I should complain of it.

X Int. 7. On what grounds?

Ans. On the ground of overvaluation for mere arithmetical convenience.

X Int. 8. Do you understand or do you believe that the assessors do have a minimum price of $100 in taxing any lot or piece of land?

Ans. I do not know that they do or do not, but believe they would not lump land in that way, regardless of actual value. I understand their rule is to tax no property above what they consider its actual value.

X Int. 9. Then, in the cases you have referred to above, where the property sold for much more than the valuation of the assessors, the assessors were simply in error in their estimation of the value?

Ans. Perhaps not. Assessors look backward more than forward, and feel that they have no right to consider to much extent the effect of changes that may take place but have not taken place. They fix a valuation based on well-known facts, and feel that they have not a right to consider plans contemplated by private parties, but not yet acted upon.

RUSSELL A. BALLOU.

Attest: JOHN G. STETSON, *Examiner.*

317 Evidence for complainant in reply, taken pursuant to the sixty-seventh rule of the Supreme Court of the United States in equity, as amended, before me, John G. Stetson, examiner.

Present: Charles S. Hanks, Esq., of counsel for complainant; Asa Cottrell, Esq., of counsel for defendants, Anna Hanbury and Michael Andrew Rorke; Miner N. Knowlton, one of the defendants.

Deposition of Charles F. Loring.

BOSTON, *Sept.* 21*st*, 1883.

Direct examination by CHARLES S. HANKS, of counsel for complainant:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Charles F. Loring; 31; Boston, Mass.; lawyer.

Int. 2. Are you a member of the Suffolk bar; and, if so, for how long?

Ans. I am; eight years.

Int. 3. What is the name of your firm?

Ans. Moulton, Loring & Loring.

Int. 4. Is it a part of your business to examine titles, look up records, and perform the usual duties of a conveyance-?

Ans. It is.

Int. 5. Do you do conveyancing other than what comes from your clients?

Ans. Not conveyancing. I have examined titles for other lawyers.

Int. 6. Will you please state, in your own way, certain examinations of the records of the registry of deeds of Suffolk Co. which you were required to make by me?

318 Ans. I was requested to examine the records and see what conveyances, if any, had been made by Charles J. Paige or Page, C. J. Paige or Page, James H. Paige, Page, or J. H. Paige or Page, to the following parties: G. W. Wilson, Louis Aldrich, Patrick Mehan, John Cooper, George H. Wardsworth, C. L. Allen, O. Sharp, Carl Lehnard, R. H. Kerr, E. O. Goodwin, Geo. Haine, T. Reilly, Dr. Little, & E. R. Merriam, between 1872, — day, inclusive, and the present. I found no conveyance to G. W. Wilson, none to Louis Aldrich, none to John Cooper, none to Patrick Mehan, none to Geo. H. Wardsworth, but to Gordon H. Wardsworth lot No. 5, on Beech St., bounded northeasterly on said Beach St., instead of southwesterly on Beach St., as should be the fact if the lot is on plan used in

the examination. That conveyance is in Book 1203, page 214. The other conveyances between the parties are assignments of mortgages recorded as follows: Book 1230, page 64; Book 1231, page 45; Book 1230, page 64. I also found conveyances to C. L. Allen of land on Boylston St. Conveyances are recorded as follows: Book 1205, page 151; Book 1205, page 155; Book 1205, page 157. I find none of these lots mentioned in these conveyances on plan marked "Exhibit A, Moses." The conveyance to O. Sharp, an assignment of a mortgage, B'k 1244, p. 32. I find no conveyance to Carl Lehnard, but to Carl Lihnart conveyance of lot No. 34 on this plan—that is, Exhibit A, Moses, B'k 1223, p. 129; to R. H. Kerr lot No. 32 on said plan, B'k 1228, p. 88, and I find a mortgage back to the
319 grantors, B'k 1223, p. 102. The consideration in the deed was $525; the consideration of the mortgage was $393.75; to E. O. Goodwin lot No. 31 on said plan, B'k 1223, p. 103; to Geo. Haines, nothing; to T. Reilly, conveyance of land on Beach St., Clarendon Hills, lot No. 5, plan of E. N. Hucke's estate, plan dated May 22, 1872, but said plan is recorded with Norfolk deeds, and I have not examined it, but the description in the deed reads: Bounded southwesterly on Beach St. It may be a lot described in this plan or it may be further up Beach St. This conveyance may be found in B'k 1222, p. 66. I find no conveyance to any Little within the specified time from these grantors. I find no conveyance to E. R. Merriam from the grantors within the specified time. I find that James H. joined with his brother in the following conveyances: In B'k 1230, p. 64; same book, 1230, p. 64; B'k 1231, p. 45; 1223, p. 129; 1223, p. 88; 1223, 103; 1222, p. 66. All these conveyances have been cited above in this answer—*i. e.*, on this plan of "Exhibit A, Moses." I find conveyances of the following lots: No. 31, 32, 34, and 5, probably 5.

(Objected to as illegal, incompetent, immaterial, and unimportant.)

Cross-examination by ASA COTTRELL, Esq., of counsel for defendants Hanbury and Rorke:

X Int. 7. When did you make this search and at whose request and who paid you, if you have been paid?

320 Ans: I made the search yesterday for Mr. Hanks. I have not been paid.

X Int. 8. Who assisted you beside Mr. Hanks, if any one?

Ans. No one assisted me at all.

X Int. 9. Are you acquainted with Mr. Knowlton, the gentleman sitting at the table opposite you, and whether or not you had any interviews or conversations with him or in his presence in regard to the search, and whether you have at any time seen him before you saw him here this morning?

(Objected to.)

Ans. No, sir; no, sir. Late yesterday afternoon I went to the office of Mr. Hanks to make my report. I saw this gentleman sitting there. Mr. Hanks being out of the office I enquired of him

when Mr. Hanks would be in. He told me probably in about 10 minutes. I went away and called soon after. He told me Mr. Hanks had not returned. That is the only time I ever saw this man in my life and all the conversation I ever had with him.

X Int. 10. Are you acquainted with Theodore B. Moses?

(Objected to.)

Ans. No, sir.

X Int. 11. You were requested, as I understand you by your answer No. 6, to search the records to ascertain if any property had been conveyed by the Paiges or either of them to the several persons whose names you mention in your answer. Was that what you did? And, if you did anything else, state what.

321 (Objected to last clause.)

Ans. Well, I was also to ascertain, in the course of my examination, whatever conveyances were made by Charles J. Paige or Page, C. J. Paige, Page, James H. Paige, grantors, to grantees G. W. Wilson and of any of the others named in Int. 6, answered to land upon this plan. That is all that I have any recollection of and all that my minutes show.

X Int. 12. Will you say positively that there are no deeds to said G. W. Wilson and the other persons named by you in answer 6 except the ones that you have designated in said answer?

Ans. I will say there are no other deeds from these grantors.

X Int. 13. Did you follow down the indexes of grantees from 1872 down to the present time, and did you do the work personally, wholly?

Ans. I followed down the indexes of the grantors. I consider that the proper way to arrive at the desired information. I did the work wholly alone. I followed down the indexes of the grantees, consisting of 14; would require much more labor than to follow down the two grantors.

X Int. 14. Whether or not you received any directions from any one as to the manner of making this search.

Ans. No, sir.

X Int. 15. Did you not know that the purpose of the in-
322 vestigation was to show if it was true that the Pages had not made deeds to the said Wilson and 12 or 13 others named in your answer?

Ans. No, sir.

X Int. 16. Then you didn't know the object or purpose of the investigation any further than to ascertain what deeds had been made by the Paiges to said parties?

(Objected to.)

Ans. I was instructed to ascertain what deeds had been made by the Pages to G. W. Wilson and the other parties and what deeds or conveyances conveyed lots on this plan.

X Int. 17. Were you not instructed also that there was a suit

pending which made the facts that you were requested to ascertain important to the side Mr. Hanks represented?

Ans. I was instructed to report the result of my investigations to Mr. Hanks and also told that I might be called as a witness to state the result of my examination.

X Int. 18. And you understood, did you not, that a suit was pending involving, in some way, the enquiry which you were employed to make through the record of deeds.

(I object and protest against the further examination of the witness on the ground that the questions asked are, for the most part, immaterial, and show a lack of professional courtesy.)

Ans. Well, I think I inferred something of that kind.

CHARLES F. LORING.

Attest: JOHN G. STETSON, *Examiner.*

323 *Deposition of Philip Sowden.*

BOSTON, *Sept.* 21*st*, 1883.

Direct examination by CHARLES S. HANKS, of counsel for complainant:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Philip Sowden; 67; Boston; farmer.

Int. 2. How long have you resided in Boston and vicinity?

Ans. It has been almost all my life. I was in Somerville once.

Int. 3. State exactly where you reside—the street and number, or otherwise designate the locality.

Ans. I reside on Poplar St., between Roslindale and Clarendon Hills.

Int. 4. How long have you resided in that vicinity?

Ans. 41 years.

Int. 5. Has your attention been called to a tract of land formerly owned by C. J. & J. H. Page, situated in an angle formed by roads now known as Beach and Poplar St., said to contain 18 acres, more or less?

Ans. I owned it over 20 years.

Int. 6. What is the distance from your house to this land?

Ans. I should think it was ½ mile.

Int. 7. Please state if you own your own dwelling-house and how much land with it.

324 Ans. I do. 13 acres of land.

Int. 8. In reference to this land on Beech and Poplar Sts., shown in "Exhibit A, Moses," please state when you purchased it, how was it then enclosed, at the time you owned it, its general features, as to high, low, or dry.

(Objected to as illegal, incompetent, unimportant, and also because it is original matter and not in rebuttal.)

Ans. I purchased it Nov. 14, 1849. There was a good stone wall all around it. The whole thing is a basin. We called it the "basin

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ed to own a good deal of land there. I think I owned here. I don't think I owed a dollar on it; I know I

hat changes have been made in the surface of this tract since you purchased it, and what improvements, if any, have been placed upon it?

(Same objection.)

Ans. Well, they have cut roads through it, took away most of the stone wall, and cut down the trees. I sold $400 worth of cherries from it in one year. The best cherry orchard there was in the town, and I grafted them all myself.

Int. 10. Do you call these changes improvements—that is, tearing down the stone wall and cutting the trees and cutting the road which was cut?

Ans. I think they have spoilt the place.

325 (Objected to.)

Int. 11. Do you consider any part of this subdivision low lands?

Ans. Yes, sir; it is very wet, heavy land, the most of it. I have plowed every inch of it except a small piece I had to dig over, because I could not get an ox over it. I could not get one in there any way.

Int. 12. How did the land plow?

(Objected to.)

Ans. Well, it plowed hard. I had to put on three yoke of cattle. It was very stony and heavy.

Int. 13. In the wet portions would there be a wet furrow?

(Objected to.)

—. Yes, sir; I have plowed it when water would run into the next furrow. It is a very good hay farm. I used to cut lots of hay there, but there is not much there now.

Int. 14. What do you know about water being upon this land in the fall and spring?

(Objected to.)

—. It used to be a pond when I owned it. The boys used to go up there skating.

Int. 15. Did your children ever skate on this tract?

(Objected to.)

Ans. Yes, sir.

Int. 16. How large a pond would it make?

(Objected to.)

326 Ans. Well, it would make quite a pond. It went back about ½ way of the farm, and above that was the mire hole.

Int. 17. Does a pond form there now in the fall, winter, or spring?

(Objected to.)

Ans. Not so much; because they have dug a culvert under the road since I sold it.

Int. 18. Do you see this subdivision every year?

(Objected to.)

Ans. Yes, sir; I go by there every year to go to the woods.

Int. 19. How often?

(Objected to.)

Ans. Probably I go four times a week; probably every day some weeks, when the weather is pleasant.

Int. 20. What have you seen there in the fall, winter, or spring of last year?

(Objected to as to form and substance.)

Ans. I have seen ice there in winter.

Int. 21. Have you seen water there in the fall or spring?

(Same objection.)

Ans. I have.

Int. 22. Are you acquainted with Dale St.?

(Objected to.)

Ans. I am; that was cut through my old farm; that was the first sale I made.

Int 23. Please describe the part of Dale St. from Poplar St. to the railroad as to its width, the land on either side, whether it is straight or not, whether it has fences or not, whether grass grows in the street or not.

327 Ans. It is about 30 or 40 feet wide. I have not been on that street for 10 years. It is very hilly on one side; on the other side it is level—what we call level. I can't answer that question. I cannot answer whether there is grass in the streets or not. I have not been there since I sold the house. I plowed all around there except in the swale. It is rather crooked down by the depot.

Int. 24. Please state whether or not on the lower part of Dale St. the land is low and wet.

(Objected to.)

Ans. It is wet and low. I sold the whole of it and where the depot is 40 years ago.

Int. 25. Please state what you paid for the land called the Paige subdivision.

(Objected to because it is immaterial and unimportant and incompetent.)

Ans. I paid just $3,000 for it.

Int. 26. How much did you sell it for? State fully.

(Same objection.)

Ans. I think it was $8,000.

Int. 27. Did you receive $8,000 cash or part money and part land? State the whole transaction.

Ans. I received $3,000 down and took a mortgage back for $5,000.

Int. 28. Did the sale cover both the lots marked in blue and white on "Exhibit A, Moses?"

Ans. It does cover the whole.

328 Int. 29. For what can this tract of land be used for now?

Ans. I don't know what they can use it for; it is all cut to pieces, and for building lots it is nothing great. It will take 20 or 30 years before there will be much building there. The R. R. has fenced up the main street.

(All after the word pieces objected to because the witness is not qualified to give an opinion.)

Int. 30. Are you acquainted with the value of lands and lots in the vicinity of Clarendon Hills?

(Objected to because the witness should first show his means of knowledge.)

Ans. I am.

Int. 31. What is your means of knowledge? State fully.

Ans. The land I sold the Metropolitan Co., being 50 acres, at $200 per acre, and they failed on it and I bought some of it back at auction. They put up this land at auction in 1877. I bought back about 6 acres of it near my house—the best part of it. One lot I paid $\frac{5}{8}$ of a cent per foot for 2 acres; one lot I paid $1\frac{1}{2}$ cts. for; the corner lot I paid 2 cts. for; it was the best part of the farm.

(Objected to as not responsive and incompetent evidence.)

Int. 32. Have you any other means of knowledge?

Ans. There were other sales there at the same time; lots

329 of them. All this whole territory was put up at auction. This was in 1877, you know. (Witness refers to "Exhibit B, Moses.") They sold this lot of land at auction; I mean land of the Metropolitan Land Co. It joined the depot, too. I was at the sale for 3 days; I was there all day long. The highest lot that was sold there brought 4 cents a foot; it was opposite my house. They went from a $\frac{1}{2}$ cent, $1\frac{1}{2}$, 2, $2\frac{1}{2}$ cents, and the company bid on the lots themselves, and I can prove it. I sold two acres of land here 30 years ago for 1,400 dollars; right on the main street; very nice building lots; very nice; there are no better anywhere; I paid $700 for them. The woman sold that land the other day—part of it. Her husband is dead; she came to me. She bought it to add onto her 2 acres, and she sold it the other day at the same price that she gave me thirty years ago. The Cook place, adjoining the Page subdivision, was sold at auction on the mortgagees' sale; it fetched about $4,000 for 12 acres; all high and dry land; house and barn on it. I also know of land that they want to sell; the farm right opposite the land in dispute. House, barn, orchard, and 24 acres of land she offers now to sell for $7,000, but I think I can buy it for five thousand, because my son went to see her to buy it.

(Ans. objected to.)

330 Int. 33. Is the land sold by the Metropolitan Land Co. and referred to by you above better land; and, if so, how much better than the Page subdivision?

(Objected to.)

—. It is better to build on; it is nearer the depot, and dry land; some of it is worth three times as much.

Int. 34. Is the land known as the "Cook place" and referred to by you above better land; and, if so, how much better than the Paige subdivision?

(Objected to.)

Ans. I should not think there was very much difference; it lays a little higher on the hill.

Int. 35. Was the land which the woman sold for $1,400 better land than the Paige subdivision; and, if so, how much better?

(Objected to.)

Ans. It is better building land, in a better neighborhood, on a better street. They have got the water there; schools and churches close by; the depot not more than 3 minutes' walk; good road. It is altogether better; I cannot state how much.

(Adjourned.)

BOSTON, MASS., *Sept.* 22, '83.

(The counsel for complainant suggests that in the foregoing examination of Mr. Sowden he did not suppose that the objection to the questions embraced the objection to the form of the question as being leading, and therefore proposes to re-examine and again
331 submit said questions so framed as to avoid the objection to the form as being leading. Thereupon counsel for defendants waives so much of said objections as apply to the form of the questions on the ground of their being leading or suggestive.)

Int. 36. In answer to int. 11 why did you say oxen could not be made to go over a certain strip?

(Objected to generally.)
(Counsel insists upon knowing the ground of the objection.)
(The other counsel declines.)

Ans. You can't drive a pair of cattle into a spring hole; they smell it before they get to it.

Int. 37. In answer to int. 23 you used the expression, "Since I have sold the house." Please explain.

Ans. I have not been on the street since I sold the house; that has been 10 years.

Int. 38. I do not ask when you were on the street; but please explain what you mean by saying When I sold the house—that is, what house, when it was sold, &c.

(Objected to.)

(Counsel declines, as above, to give the reasons of his objection.)

Ans. The house that I sold has been moved, and they built it larger; a few rods further on the same lot of land. I could not give the year that it was sold; it was all of 10 years ago. I sold it to Mr. Hammond. There were 2 acres in this lot. I sold it for $1,000.

Int 39. In answer to int. 32 you said the highest lot sold
332 for 1 cent per foot. Was there more than one lot sold at that price?

(Objected to.)
(Counsel declines to give his reasons for said objection.)

Ans. I did not see no other lots sold so high as that.

Int. 40. In answer to int. 32 you spoke of a certain tract of land being sold by you for $1,400; that part of it was afterwards sold by the purchaser, and that at another time more was bought. Please state how many acres you sold her, and how many acres she sold the other day.

(Objected to generally and as to form.)
(Counsel asks that def'ts state what he means by "generally" and he declines.)

Ans. I sold her two acres, and she bought one acre on the back side of this tract to make it square. She paid $400 for that acre. She built a house on the part that I sold her near the road—on the corner of Poplar St. and Brown Ave. She sold one lot on the upper side of this tract to a man named Boundalier; the balance of the land and one acre she sold the other day, and I should think there was about 2 acres.

Int. 41. In the same int. you use the expression, "She came to me." Please explain what you meant.

(Objected to.)
(Counsel declines to give the reason of his objection.)

Ans. I told her I thought she had better sell it.

333 (Answer objected to.)

Int. 42. Please state your whole conversation with her.

(Objected to as immaterial and a conversation in the absence of the defendant, defendants, or either of them, and incompetent generally.)
(Question waived.)

Int. 43. Please state whether or not this lot has been offered to you.

(Objected to as immaterial and a part of a conversation and incompetent for any purpose.)

Ans. It has not.

Int. 44. Please state if it has ever been offered to you as a security for money loaned.

(Same objection.)

Ans. It was at the time of the sale.

Int. 45. What do you consider a fair market price for this property spoken of above?

(Objected to as to form and because of its immateriality, its market value not being a subject of enquiry in this case.)

Ans. Well, I think that was a very fair price she got for it.

Int. 46. When was the sale of the Cook farm you spoke of in int. 32?

(Objected to as immaterial.)

Ans. I don't know.

Int. 47. How does the land sold on the Paige subdivision compare with this tract sold by this woman, spoken of above, as to condition, location, and value?

334 (Objected to as incompetent and immaterial, as being simply a comparison of estates.)

(Counsel is asked to explain what he means by incompetent, and he declines to further explain his objection.)

Ans. I understand that now. The estate to Miss Carruth, the tract on corner of Brown Ave. and Poplar St., is a very nice neighborhood. It has good water, good roads—as good a neighborhood as there is anywhere; very nice building land, high and dry.

(Answer objected to as not responsive and incompetent.)

(Counsel for complainants wishes to know what defendants' counsel means by "incompetent.")

(Defendants' counsel declines to explain his objection further.)

Int. 48. Please state how the land called the Paige subdivision compares with your property as to condition, location, and value.

(Objected to as incompetent, as being simply a comparison of two estates.)

(Counsel for compl'ts makes the same request as above.)

(Counsel for def'ts makes the same reply.)

Ans. Which do you mean? I have two estates. My estates are in high cultivation, full of fruit trees—good buildings. I should not want to give an acre of my land for 5 of it, and I shouldn't, either. I got over $2,000 from one estate last year, off from 13 acres.

335 (Same objections as to last answer.)

(Same requests and reply.)

Int. 49. At what price per foot are you willing to sell your land?

(Objected to as illegal and incompetent.)

(Request is made that the objection be made specific.)

(Refused.)

Ans. I will sell the upper lot nearest the depot for 2 cents per foot. That is the highest lot I have got.

Int. 50. Are you well enough acquainted with real estate to know whether land is suitable for building purposes? And, if so, please state your means of knowledge.

(Objected to because witness should be asked his means of such knowledge.)

Ans. I am. I have built 4 houses myself, and I think good, dry land is better than a mire hole any day.

Int. 51. Please describe the surface of the tract known as the Paige subdivision, its slopes, &c.

Ans. There is one part of it that is very good land; there are other parts of it that are wet.

Int. 52. Please examine on "Exhibit A, Moses," the 27 lots colored in blue and state their value, either separately or in groups.

(Objected to.)

Ans. Lot one is a good building lot; 35 is pretty wet; 69 is a good building lot; 73 is not a very bad lot; it is a little on the
336 side hill; lots 77, 78, 79, & 80 are very steep and wet. They took out gravel there—what they call gravel—well, it is heavy, wet land. It is right under the hill where the springs are. It is clay bottom land, most of it—the lots between Charles & James St. I cut ditches all summer long through the middle of them to get them dry, and filled them with stones. I plowed the stone up from the land. Lots between Beech and James Sts. is wet, clay land; heavy land; you could only raise grass, that's all. It was all covered with blueberry bushes when I cleared it up—swamp blueberries and alders. I broke two new plows. This is wet land. I am not sure about lot 13; I won't be certain about that lot.

Int. 53. Please state what you consider a good market value per foot of the whole Page subdivision.

(Objected to generally.)
(Same requests as above by compl't's counsel.)

Ans. I should rather put it by the acre; I do not think that land ought to go by the foot. I should think $250 per acre would be a high price for it.

(Answer objected to as not responsive.)

Int. 54. Please state how the lots marked in blue on "Exhibit A, Moses," compares as to condition, location, and value with the rest of this Paige subdivision.

(Objected to as instituting a comparison not affecting the issue and incompetent.)
(Compl't's counsel requests that the word incompetent be made more specific, which was declined.)

337 Ans. Some of it is about the same and some is a good deal better—I mean the white ones are the best. The white ones are the same in here all through this valley.

Witness points to the lots between Charles and James Sts.

Int. 55. Please state what you consider is a fair market value of the lots marked in blue per foot or in any manner you choose.

(Objected to generally.)
(Same request as above.)
(Same ans. as above.)

Ans. I've answered the question before.

Int. 56. Please state what you consider a fair market value per foot of the lots between Charles & James St., marked in blue on "Exhibit A, Moses."

Ans. I should think they were worth about $150 an acre; I don't think it ought to be sold by the foot.

Int. 57. Please state why you say it should not be sold by the foot.

(Objected to generally, and same requests and reply.)

Ans. I think it is too wet to build on.

Int. 58. Please state what is a fair market value per foot of the lots on the northerly side of Charles St., marked in blue on said plan.

(Objected to generally, and same requests and reply.)

Ans. Part of it is so steep that you cannot build on it very well. Lots 69 & 73 do very well. About as much an acre as last lot I mentioned—$150 per acre.

338 Int. 59. Please state what is a fair market value per foot of the lots on the southerly side of James St.

(Objected to, and same request and reply.)

Ans. Well, I should think that was worth $250 per acre. It is a big price for it.

Int. 60. Please state which of these lots marked in blue are good building lots.

(Objected to generally, and same requests and reply.)

Ans. Lot- 1, 69, & 73. Lot 13 I am doubtful about; I cannot tell by the plan.

Int. 61. Please state whether you were able to make this land dry by the ditches which you spoke of above.

(Objected to generally.)
Same request & reply.)

Ans. I made it dry enough to plant it. (Witness refers to Page subdivision between Charles & James.) This other part between Beech and James St., I planted that to corn; I sowed it down to grass; I lost my crop of corn because the land was so wet. It was good hay land; yes; first rate.

Int. 62. Please state if you are acquainted with land mortgages in the vicinity of Clarendon Hills; and, if so, to what extent?

(Objected to.)
Same request and reply.)

Ans. I am acquainted; I have held a good many mortgages there and have got some still.

Int. 63. Please state more specifically in reference to the mortgages you speak of above.

Ans. I have had mortgages upon nearly all the land upon
339 Clarendon Hills. I had seven thousand dollars in what is called Taft's Hill—that is, Clarendon Hill; I have $8,000 on my old homestead—that is a 50-acre lot; I had $1,000 on the Cary lot—11 acres; I had 5,000 on the Page estate; I have got $1,000 on the Dun place; I have got $500 on the Bothorp estate; I have had quite a number of small mortgages on the Clabord Hill when it was platted out; I had a $1,000 on the Hastings estate; I had $1,100 on 11 acres where the depot stands; I had $2,000 on the Cook estate—that is marked joining Page subdivision—a strip of land between; I had $1,600 on the muddy-pond wood just above there; I had $700 on the Carruth estate. There are quite a number that I cannot get at now.

(Answer objected to.
The same requests and refusals as above.)

Int. 64. Have you had any mortgages or transactions in reference to mortgages on the Cooper estate, on the opposite side of Beech St., and this Paige subdivision?

(Objected to because it is incompetent evidence to affect the issue of this case and is unimportant and immaterial.)
(Same request as above.)

Ans. I have.
Int. 65. Are you acquainted with this Cooper property?
Ans. I am.
Int. 66. Please state the transaction.

340 (Objected to as incompetent to affect the parties in this case and immaterial and unimportant.)
(Same requests.)

Ans. Mrs. Cooper came down to me last week. She came down twice. She wanted to borrow $1,200 on the place—that is a house about ½ built. I told her she wanted to sell the place. I told her I would not give her over $500 or $600 on it.

(Answer objected to.
Same request.)

Int. 67. What is the fair market value per foot for this Cooper estate?

(Objected to.
Same reason.
Same requests by att'y for compl'ts.)

Ans. It is an extra piece of land. I should think it was worth from 3 to 4 cts. per foot.

Int. 68. From your own knowledge and experience, please state

whether the 27 lots of land marked on "Exhibit B, Moses," in blue is a good and ample security for a loan of $800 at 8% interest.

(Objected to as incompetent and immaterial.
Same request as above.)

Ans. It is not—at least I do not think so.

Int. 69. Please state what land is worth in the vicinity of E. A. McDonald's house, and what, if any, sales have been made there.

(Objected to as incompetent and immaterial.
Same request as above.)

Ans. In 1877 this large land sale—the lot right back of his
341 house, I should think there was two acres in it—was sold for ½ a cent. per foot, but the Co. bid it in. The next lot to it, adjoining—there was something near two acres in that—I bought it for ⅝ of a cent. per foot. That was a cash sale.

(Ans. objected to.
Same requests.)

Int. 70. Please state what is the value of land now and then in that vicinity?

Ans. The land is not worth so much.

Int. 71. How does the estate which you bought at ⅝ of a cent per foot, near the McDonald estate, compare with the "Paige subdivision?"

(Objected to as incompetent, being simply a comparison between estates.)

Ans. The estate that I bought is worth the most.

Int. 72. Please state what is the value of that lot of the Paige subdivision which was purchased by Mr. Rogers.

(Objected to.
Same requests.)

Ans. Mr. Rogers bought it. He told me he paid 10 cts. per foot for it, but it was in "greenback times." He told me he paid twice too much for it. That was lot 67 of the Paige subdivision.

Int. 73. Have you had any conversation with real estate men in reference to the value of this "Paige subdivision?"

(Objected to because it is incompetent and hearsay evidence and is immaterial.)

Ans. I have.

342 Int. 74. Has Albert Howe, auctioneer, ever given you his valuation of the property?

Ans. He has.

Int. 75. Please state what he has told you.

Ans. I was down on Friend St. just after he had the auction there. He said to me, Mr. Sowden, you was a lucky man to sell that land. He said, I had an auction sale there. He said he did not sell any lots. He said it was not worth $250 an acre. I told him I did not think it was myself.

(Ans. objected to because Mr. Howe's attention was not called to any such conversation while he was on the stand in this case.)

Int. 76. Please state whether or not you are well acquainted with the price and quality of gravel; and, if so, your means of knowledge.

Ans. Well, I have sold the city of Boston within a few years $5,000 worth—twenty-five cents a load.

Int. 77. Please state the value of the soil on the side hill of the Paige subdivision as gravel.

Ans. It ain't good for anything. Paige sold a lot of it to the bosses on the road, and the neighbors complained of it, and they went down to my gravel pit and covered it all over with gravel from my pit, but if I had known it I would have stopped them, and I have stopped them. Mine is very nice binding gravel.

343 Int. 78. Please state why the neighbors complained of the gravel that was taken from the Paige estate.

(Objected to as incompetent. It is immaterial what the neighbors said, and it is hearsay.)

(Question waived.)

Int. 79. Please state what was the condition of the road by this gravel from the Paige subdivision being used.

(Objected to because it is not the proper way of proving the quality of the gravel on the "Paige estate.")

Ans. It would stick all over your feet and wheels and everything else it went into.

Int. 80. Was it the gravel from the Paige subdivision which would stick to your feet?

(Same objection.)

Ans. It was; and they have never taken any gravel out since; that was two years ago.

(Last part of answer objected to.)

Int. 81. Please state what is the condition of the timber on the swale land you spoke of in int. 23.

Ans. It is all grass. There is no timber on the land.

Int. 82. I mean whether or not the swale lands you spoke of in int. 23 is covered with a thicket of swampy, low bushes or timber on the lower end of Dale St.

Ans. Part of it is grass land, and part of it alders and bushes and some large pines and lots of birches.

The counsel for the defendants objects to all the testimony
344 of this witness on the subject of the value and condition and appearance of the lots in question as not being rebutting testimony, but being original matter, in pursuance of the notice given this morning at the beginning of to-day's testimony that this objection would be noted at the close of the direct examination.

Cross-examination by ASA COTTRELL, Esq., for defendants Hanbury and Rorke:

X Int. 83. Do you know Charles A. White; and, if so, how long have you known him?

Ans. I did know him. He is dead now. I did know him 50 years before he died.

X Int. 84. You sold the estate spoken of as the Paige subdivision to Mr. Charles A. White, did you not; and how long did Mr. White continue to own it, to the best of your knowledge?

Ans. I sold it to him. I know that he paid the interest four times. He might have paid me 5 times. It has been so long I do not recollect.

X Int. 85. Can you give the date of the deed from you to Charles A. White; was it not the 31 of Dec., 1870?

Ans. I should think it was about that time, for this is the last tax bill that I can find; it is for 1867.

X Int. 86. Do you know a person by the name of Wm. A. Blaizo; and, if so, were you acquainted with him in 1871, and don't you know that said William A. Blazo, as owner of said estate,
345 mortgaged it to Edward P. White for $14,500, subject to your mortgage of $5,000.

(Objected to form and as being immaterial.)

Ans. I knew Mr. Blaizo. I did not know he owned the estate until I went to see Mr. Charles A. White. Mr. White told me he had sold it to Mr. Blaizo. I went to Mr. Blaizo; he said he had sold it to Charles J. Paige, a man whom I did not then know. I told Mr. Blazo that I should not run after my interest any more, but if he saw Mr. Paige to tell him that I wanted to see him. I did not know he mortgaged it. Mr. Charles A. Paige came up to my house, I think, that very evening. I told him the interest had been due some time, and if he did not pay within a week I would take possession of the property. He said Mr. White agreed to pay the interest. I asked him if he held the equity of the place. He said he did. I told him I had seen Mr. White and Mr. White told me he did not agree to pay the interest.

(Witness asked that he be allowed to state more when the answer was read to him.)

(Counsel for defendants objected, unless it should be responsive to the question. Complainant's counsel insisted that he should be allowed to go on and state what he desired.)

Mr. Page came to me to see if I would assign the mortgage to him. I told him that I would not until I should see Mr. White. I went up to see Mr. White again. I went up to see if he had any opposition to my assigning the mortgage to Charles J. Paige. He
346 said he had not. Mr. Paige came up to me again. I told him I would assign the mortgage over to him if he would give me a bonus of $200 on it. He said he could not raise so much money. He said he would give me $100, but he concluded at last to give me my price; I would take no less. The mortgage was as-

signed to his father; I think it was Gilman Paige. He is dead now, and the money was paid by Lawyer Keyes.

(Adjourned.)

BOSTON, *Sept.* 25, 1883.

(The examination of Philip Sowdon, the witness being examined for the complainant, having been suspended yesterday on account of the sickness of —— Robinson, the examining clerk, it is agreed that the complainant's time for taking rebutting evidence may be extended to and including to-day, Tuesday, Sept. 25, 1883.)

(The succeeding cross-examination is put in *de bene esse*, and is not to be construed as an assent to the legality of the direct examination as rebutting testimony.)

X Int. 87. In your last answer you have stated that you refused to assign the mortgage which you held on the Clarendon Hill estate unless the party would pay $200 bonus. Was this demand made because of the superior security or the rate of interest or both or which?

Ans. It was made on account. I didn't know but Mr. Charles A. White had a second mortgage, and I didn't know but they
347 were going to close up and catch him. Mr. White was very friendly to me; we had had a great many dealings together; and then I went and saw Mr. White. He told me to go ahead and do as I was a mind to; he didn't care anything about it.

X Int. 88. And then you did assign the mortgage and you did demand and receive the bonus of $200 for doing it, didn't you? Now, state why you demanded and received the $200 for making the assignment.

(Objected to.)

Ans. Yes, sir; because Mr. Page put me to a good deal of trouble, and I knew what kind of a man he was. I had heard what he was.

X Int. 89. Was what you have stated in your last answer the whole reason for demanding said bonus?

(Objected to.)

Ans. Yes, sir.

X Int. 90. Then you considered the security and sale of interest satisfactory, didn't you?

Ans. Well, I didn't think it was. I didn't care anything about it, anyway.

X Int. 91. Why didn't you think it was; in what respect?

Ans. Because I didn't think the place would fetch five thousand dollars. I shouldn't have sold the place unless I thought I got twice what it was worth. I wasn't obliged to sell it; didn't owe a dollar on it.

X Int. 92. Do we understand you that you didn't think the place was worth more than one-half what you got, namely, $4,000?

348 Ans. I do think so. I think $4,000 would have been a fair price for it. As long as they wanted it I thought I'd sell it.

X Int. 93. Then do we understand you that you refused to assign said mortgage except upon the payment of said $200 to get even with Mr. Page?

(Objected to.)

Ans. I would have assigned it to anybody else for the face value but him.

X Int. 94. You lend a good deal of money to people in the neighborhood of Clarendon Hills upon land in that vicinity, don't you?

(Objected to.)

Ans. Yes, sir.

X Int. 95. And is not your estimate of the value of property there based upon your opinion as to its security for loans upon it?

Ans. It depends upon where it is situated. I should want to see the property before I loaned anything upon it; whether there was a house or anything on it.

X Int. 96. You have said in your previous answers that you didn't think the 27 lots in controversy were good security for $800. If you were willing to take a mortgage on the whole estate in 1870 to secure $5,000 why are not said lots security for $800 now? State your reasons.

Ans. When I took the $5,000 mortgage it was all in one piece, stone wall all around it, in a high state of cultivation, and a good deal of fruit trees on it. One year I sold $400 worth of
349 cherries; no roads cut through it, and now it is all torn to pieces, roads cut through it, walls all taken away, and it is nothing but a pasture. It was a nice little farm when I owned it and sold it.

X Int. 97. Then you estimate its value for farm purposes, do you not?

Ans. I do; and I think it will be farm property the next twenty years.

X Int. 98. You have stated that you formerly owned three hundred acres in this neighborhood. How much of it do you now own?

(Objected to.)

Ans. Between two and three hundred acres. I think I have now very near twenty acres.

X Int. 99. When did you last sell any part of this large tract?

(Objected to.)

Ans. I can't say exactly, but I sold 126 acres since I sold the Page place; all wood land just above that. I can't say when.

X Int. 100. Do we understand you that you don't take into consideration the improvements which have been made in the way of building and otherwise in the vicinity as affecting your valuation of these lots?

Ans. I think what buildings they have put there have injured the place.

X Int. 101. Has there not been built within 2,000 feet of this land thirty or forty houses since you sold it to Mr. White?

Ans. No, sir; nor quarter of them.

350 X Int. 102. Are there not between thirty and forty houses within 2,000 feet of these lots?

(Objected to.)

Ans. No, sir; there are within half a mile.

X Int. 103. And when were they built, or the greater part of them?

(Objected to.)

Ans. They have been built within twenty years.

X Int. 104. When did you sell, and to whom, the land formerly owned by the Metropolitan Land Company and shown on plan B (Moses), and how much was there of it?

(Objected to.)

Ans. It was about twenty years ago. I think there was about fifty acres.

X Int. 105. Do you consider that fifty acres worth any more now than it was when you sold it?

Ans. I do.

X Int. 106. How much more?

Ans. I can't tell you the value of the houses; there are quite a number of houses on it. I think there are about ten houses on it. Yes, there are more—twelve; good houses, too.

X Int. 107. I refer to the land without the buildings and the land that is not occupied by buildings.

Ans. Provided it was in the same condition as when I sold it. It isn't worth so much.

X Int. 108. Why isn't it worth so much apart from the buildings?

351 Ans. The walls are all taken away that I had there, and they have cut roads all through—carried away a good deal of gravel out of it. The railroad cars went in there and carried it off.

X Int. 109. Then do we understand you that it is not worth so much as it was when you sold it because it is not in the same condition that it was then?

Ans. That is not and that ain't all. I don't think the land is so high there as it was then. Those were greenback times.

X Int. 110. What did you sell this fifty acres for per acre?

Ans. I sold it for $200 an acre, and building for $2,000, making $12,000.

X Int. 111. Do you mean to say that, in your opinion, the unoccupied land of this tract is worth now, as it lies, no more than it was when you sold it?

Ans. I can buy some of it for less. Take the houses away and I think it wouldn't fetch that.

X Int. 112. Don't you think that the existence of the houses there tends to enhance the value of all the land in that neighborhood?

Ans. I suppose it does.

X Int. 113. You say you paid four cents a foot for some of this land sold by the Metropolitan Land Company in 1877. Were
352 you there during the whole of the sale, and do you know, of your own knowledge, what all the other lots brought?

Ans. I did not pay four cents a foot for land and didn't say so, either. I was there pretty much the whole time. I don't know what they all brought, but the highest lot sold there was four cents; that I do know; that I saw sold. It was a *bona fide* sale. It was right opposite my house. My own son-in-law bought it. He wanted it for a carpenter's shop, and he put it up, too.

X Int. 114. How do you know that four cents was the highest price any of the lots brought at that sale?

Ans. The highest I see sold for that price; that's all.

X Int. 115. About how many lots were offered for sale at that auction, and you may refer to the schedule of the proposed sale, if you desire, before answering the question?

Ans. Oh, there were a great many lots.

X Int. 116. Several hundred?

Ans. Well, I couldn't say that; there might have been.

X Int. 117. Was it a closing out of all of the company's lots by trustees?

(Objected to.)

Ans. I suppose it was. I guess they bid in a good many of them.

X Int. 118. Did your son-in-law buy this lot of land by your advice and approval?

(Objected to.)

353 Ans. No, sir.

X Int. 119. Did one of your sons-in-law buy the lot on Beech street in the Page tract on which a house has been built, and did he pay ten cents per foot for it?

Ans. He wasn't my son-in-law when he bought that. He told me since that he paid ten cents a foot and that he paid twice too much for it; it was in greenback times. It was on Poplar street, not Beech street, but on the same parcel of land.

X Int. 120. Do you know the locality of T. B. Moses's house and around it? And, if so, state whether the lots of the Metropolitan Land Company opposite your house are not higher than T. B. Moses's premises.

(Objected to.)

Ans. I sold it; I ought to know it. I shouldn't think there was a great deal of difference in height.

X Int. 121. Which is the highest—the Metropolitan lots last referred to or the Page subdivision lots?

Ans. The Page lots are the highest and the wet-est.

X Int. 122. It is down hill, isn't it, from the Page subdivision to the Metropolitan lots opposite your house, and also to Moses's house, on Dale St.?

Ans. Well, some of the Metropolitan lots are a good deal higher than that is.

354 X Int. 123. Why didn't you answer the question instead of saying what you did?

Ans. Because I answered it right.

(The examiner is requested to read cross-int. 122 to the witness that he may answer it if he will, and cross-int. 122 is read to the the witness, who says:)

Well, then, there is another way that it goes up hill. It is down hill one way and up hill the other. The down hill is to Rogers's lot, and up to top of Clarendon Hill is up hill another way. It is down hill to Mr. Moses's.

X Int. 124. All this property—that is, the Clarendon Hill property and Metropolitan property—you sold before the annexation to the city, did you not?

Ans. I didn't sell them the Clarendon Hill property; what I did sell was sold before the annexation.

X Int. 125. Your property in that neighborhood is taxed by the acre, as farm property, is it not, and always has been, as far as you know?

Ans. Part of it.

X Int. 126. What part?

Ans. The homestead, 13 acres, is taxed by itself as farm property, and the lots I bought at the time of the auction sale, about six acres, a little short, is now taxed for house lots.

X Int. 127. The six acres you refer to in the last question you use for farm purposes, do you not?

355 Ans. I do.

X Int. 128. Did you buy it for that purpose?

(Objected to.)

Ans. I bought it because there was a brook from my farm into that that made that pretty rich, and I thought I'd buy so as to have control of it.

X Int. 129. That is, you bought it because of its desirableness for farm purposes, didn't you?

(Objected to.)

Ans. I did not. I bought it—made an agreement with Mr. Blake that they should take up a mortgage of $1,600 on Muddy Pond woodland in part pay for the land I bought.

(Last part of answer objected to by Mr. Cottrell.)

X Int. 130. The land you bought above referred to was somewhat low, wasn't it—the most of it?

(Objected to.)

Ans. The greater part of it is high land—good, solid land.

X Int. 131. Was that high through which the brook ran you referred to?

(Objected to.)

Ans. All the brook in my 13 acres is all the brook; what rains in there flows through one side of this piece I bought.

X Int. 132. I understood you to say that you wouldn't give one acre of your land for five of the Page subdivision land, and that you got $2,000 per year off of your farm of 13 acres. You mean,
356 do you not, for farming purposes?

Ans. I do not.

X Int. 133. The Page subdivision is a good deal higher land than yours, isn't it?

Ans. Part of it is and part of it isn't.

X Int. 134. Your land is very fertile, isn't it, and in a fine state of cultivation?

(Objected to.)

Ans. Yes, sir; it is.

X Int. 135. Are there any street- laid out or built on your thirteen acres?

(Objected to.)

Ans. None at all. There is a road all round my place, except one side.

X Int. 136. What you have stated and all that you have stated of your personal experience on this Page subdivision occurred, did it not, before you sold it to Mr. White?

Ans. I don't understand what you want to get at. I have stated a good deal here during three days.

X Int. 137. Do you mean to say you cannot understand the last question after it had been read twice to you and explained by the examiner?

(The examiner notes that he was asked to explain the question, but that what he in fact did was to read the question the second time, putting emphasis on the words "of your personal experience.")

Ans. What occurred? That is what I want to know.

X Int. 138. I am trying to ask you and have you state
357 whether or not what you have stated in your direct examination that you did upon the Page subdivision and all you did upon it was not done prior to your sale to Mr. White. Please answer.

Ans. Why, of course it was.

X Int. 139. And that was before the culvert across Poplar street was constructed, wasn't it?

Ans. There was always a culvert there.

X Int. 140. Are you sure of that, and was there before you sold any covered culvert under said Poplar street?

Ans. There was; else I should have been drowned out.

X Int. 141. Was it just the same and just as deep and wide as it ever has been since?

Ans. No, sir.

X Int. 142. Since you sold it has been deepened and widened, hasn't it?

Ans. I think it has, but it hasn't helped the place a great deal.

X Int. 143. Isn't it lower than any part of the Page subdivision?

Ans. It would be if they'd open a ditch inside where their land is.

X Int. 144. Then the culvert is low enough to drain all the land, isn't it?

Ans. I couldn't say that. There is a pretty big hole up in back and very heavy springs there, to-; very springy. I don't think you can drain it to make it dry. It is wet and heavy.

358 X Int. 145. How often have you been on this Paige subdivision since you sold it?

(Objected to.)

Ans. I ain't been there more than a dozen times, I guess—across it.

X Int. 146. What took you there on the occasions when you did go across it, as you say?

(Objected to.)

Ans. I used to go across to go up to Muddy Pond woods, where the men were chopping wood.

X Int. 147. Is that the woods you say, in a previous answer, you went to by this Paige property to get wood?

(Objected to.)

Ans. Yes, sir.

X Int. 148. When did you last see any water standing on these lots? I mean the 27 lots in dispute, and not any other land.

Ans. Last winter.

X Int. 149. What time last winter? State the month and day, if you can, or as near as you can, and how long did it remain on the lots?

Ans. Well, it was water and then it was ice pretty much all winter. I was by there.

X Int. 150. State which lots were covered with water or ice. Give the numbers.

Ans. I cannot state. I can't show you exactly where the pond hole is on this plan. If I was on the spot I could tell you.

359 It is right in here. There is a valley right up here between James and Charles streets. I don't say that any of the lots were all covered with water.

X Int. 151. Will you swear that any of these lots marked in blue on the plan, Exhibit A (Moses), were covered with ice and water pretty much all winter? And if you shall answer yes, then give the numbers of such lots.

Ans. All those lots through here are partly covered with water in the middle of winter. (Witness points to lots 41, 60, 58, 56, 55, 45, and 47.) (Witness adds:) They commence here, I think (pointing to lot 40), and I think this one is wet (pointing to lot 39). I think the ends of lots 39 and 63 are wet.

X Int. 152. Didn't you say in answer 17, "They have dug a culvert under the road since I sold it," and did you not refer to Poplar street?

Ans. They dug an old culvert out and made a bigger one. There was always a culvert there.

X Int. 153. Are you acquainted with Theodore B. Moses; and, if so, how long have you known him and when did you last see him?

Ans. I am. I have known him, I guess, as much as 30 years or more. I met him going home last Saturday, I think it was.

X Int. 154. Did you then or have you in the last 60 days had any conversation with him about the lots on the Paige subdivision?

(Objected to.)

360 Ans. I ain't spoke to the man for the last ten years (that is something to say), and it may be twenty years.

X Int. 155. Then you are not on very good terms with him?

(Objected to.)

Ans. No, sir.

X Int. 156. Do you join places, and was the cause of your misunderstanding a question of truth between you?

(Objected to.)

Ans. Not now we don't join places. At the time his place and mine joined; it was all mine once. Well, he agreed to meet me a day and cancel a mortgage and he didn't come near me, and I closed the mortgage up and took possession.

X Int. 157. You have closed up considerable many mortgages in your day, haven't you?

(Objected to.)

Ans. Not a great many.

X Int. 158. Will you please give us the name of the woman referred to in answer 35?

Ans. She has been married twice. Her name now is Harriet Young. At the time of the transaction her name was Harriet Carruth.

X Int. 159. Do you know of your own personal knowledge what she got for the lot of land referred to in said answer, and were you present when the sale was made?

Ans. All I know is what she told me. I was not present when the sale was made.

361 X Int. 160. When were you first spoken to to be a witness in this case, and by whom and where?

Ans. By Mr. Hanks, some time last week, at my house.

X Int. 161. Did you go with him over the land—I mean the Page subdivision?

(Objected to.)

Ans. I did not.

X Int. 162. When did you last go over it and whom with?

Ans. I couldn't state. I haven't been over it for some time. It is two years, I guess, since I passed over it.

X Int. 163. When and where did you first meet Mr. M. N. Knowlton—I mean the gentleman who is sitting at the table opposite you?

Ans. Three weeks ago last Sunday, in Boston, down on the Providence railroad.

X Int. 164. Did you talk about this case?

(Objected to.)

Ans. Well, I will tell the whole story. We were not two minutes together. There was a fire in the bog there, and I happened to go down. I was looking at it to see the fire. Mr. Knowlton came up the railroad. He asked me if I was acquainted round here, and if I was acquainted with real estate—the value of it. I told him I was, for I sold it all. Then he asked me if I was acquainted with this lot of Page's. I told him I sold it. He asked me if I
362 had heard there had been a dispute about it, and I told him I had heard something about it. He asked me where I lived. I showed him my house. That is all that was said.

X Int. 165. Hasn't he told you about the dispute and that he was interested in or in some way connected with it?

(Objected to.)

Ans. No, sir.

X Int. 166. Not at any time?

Ans. No, sir; and I don't know anything about it now.

X Int. 167. Nothing whatever?

Ans. Not that he told me.

X Int. 168. Haven't you talked about it with him?

(Objected to.)

Ans. I wanted to, but he wouldn't talk with me.

X Int. 169. Why did you want to talk with him about it?

(Objected to.)

Ans. I wanted to see what kind of a trade had been made—to know what they had been doing.

X Int. 170. What did he say?

(Objected to.)

Ans. He wouldn't talk with me.

X Int. 171. When and where was it that he wouldn't talk with you?

Ans. Upon the street here, when I was coming in here.

X Int. 172. What day?

Ans. Last Saturday, I think it was—no; it wa'n't; it was the first day I came in here.

(Counsel for complainant says he objects against the further
363 using of the time in questioning this witness upon points which are wholly immaterial.)

X Int. 173. Was it up at the U. S. court-house?

(Objected to.)

Ans. No, sir.

X Int. 174. Where was it?

(Objected to.)

Ans. On School street; I overtook him there.

X Int. 175. Was that before you went up to the U. S. court-house?

(Objected to.)

Ans. No; it was afterwards.

X Int. 176. Was that the first time you had met him that day?

(Objected to.)

Ans. It was the first time I overtook him or had seen him.

X Int. 177. Did you go from there to the U. S. court-house to testify?

(Objected to.)

Ans. No, sir.

X Int. 178. Did you meet him again at the U. S. court-house and have a conversation with him before testifying?

(Objected to.)

Ans. I never had any conversation about this affair with him, and I don't know about it now.

X Int. 179. I didn't ask you that. I asked you whether you met him again at the U. S. court-house and had a conversation with him before testifying.

(Objected to.)

Ans. I never had any conversation with him.

X Int. 180. Not at any time?

(Objected to.)

364 Ans. No, sir.

X Int. 181. Are you sure and do you mean to so testify?

(Objected to.)

Ans. Yes, sir.

X Int. 182. Did you not on last Friday morning stand in the outside doorway of the U. S. court-house talking with Mr. Knowlton before you went in to testify?

(Objected to.)

Ans. Nothing about this affair at all; there wasn't a word said about it.

X Int. 183. But you did have a conversation there with him, didn't you?

(Objected to.)

Ans. I bid him good morning and asked him where the place was to go; I was a stranger; that is all.

X Int. 184. When you were standing there talking with him did you see me coming across the common towards the court-house?

(Objected to.)

Ans. I didn't.

X Int. 185. Didn't you and Mr. Knowlton step inside the door of the court-house for an instant, and didn't you come out again immediately and meet me at the door and speak to me?

(Objected to.)

Ans. I was in and out a half dozen times before any of them got there.

X Int. 186. In answer 77 you say, "They went down to my gravel pit and covered it all over with gravel from my pit,
365 but if I had known it I should have stopped them taking a load of it." Do you mean that your gravel was taken surreptitiously, without your knowledge; and, if so, by whom?

Ans. The city had a right to go in there and get just what they wanted till I stopped them. They had been in there five or six years. They had the privilege to take it, but they hadn't the right to take it and cover over mud for other parties.

X Int. 187. The city paid for it, didn't they? And, if so, why did you object to their taking it to use in this particular place?

(Objected to.)

Ans. They did. I objected because I thought if they took the good gravel they should take the poor with it; if not, they shouldn't have any.

X Int. 188. That is, you were not pleased by their buying gravel from the Pages?

(Objected to.)

Ans. I was nothing against their buying gravel from the Pages, but I was against their taking my good gravel to cover over their poor stuff and their getting the same price that I was.

X Int. 189. Then you were desirous of selling to the city all the gravel it required?

(Objected to.)

Ans. I didn't want to sell them any gravel at all; I didn't want to cut into my hill, in the first place. The bosses told me they
366 had got to have the gravel because there was no gravel round there like it, and they were willing to pay for it.

X Int. 190. Then you let them have it as a matter of accommodation, and how long have they been buying gravel from you off and on?

(Objected to.)

Ans. They began on it six years ago, I think, and the last two years—ever since they took out Page's and took mine and covered it over—I wouldn't give them any.

X Int. 191. You are not very friendly with the Pages now, are you?

(Objected to.)

Ans. I don't know only one Page myself. There are two of them, I think. Yes; I am friendly with Charles J. Page. I hired a piece of land of him this year.

X Int. 192. Who did tell you about this lawsuit?

(Objected to.)

Ans. I think Mr. Rogers told me first about it.

X Int. 193. Your son-in-law?

(Objected to.)

Ans. Yes.

X Int. 194. Haven't you been told what you were wanted, as a witness, to establish in this case by any one?

Ans. All I have been told is what Mr. Hanks told me. He asked me to come in.

X Int. 195. In your 75 answer you say you had a conversation with Albert Howe in regard to the value of the property in controversy. Who, if any one, was present at that time?

Ans. Nobody.

367 Redirect examination resumed:

Int. 196. In answer to cross-int. 193—how did Mr. Rogers happen to speak to you?

Ans. He was over to my house Sunday, and he said that his lady—that is, on the other side—I don't know her name now; her name is mentioned; it is Mrs. Hanbury—she was at his house and wanted to get him as a witness, and after she inquired of him about it she didn't want him. Then he and I had a talk about it—what it was. I told him it was a wonder she hadn't come to me; I could tell her what real estate was worth up there.

(Answer objected to by counsel for defendants.)

Int. 197. What is a fair rate of interest to charge for money loaned on a good mortgage and what rate would you charge?

(Objected to.)

Ans. Six per cent. on a small mortgage and on a large amount five per cent. There are no taxes on it now, you know. I should charge same as that.

PHILIP SOWDEN.

Attest: JOHN G. STETSON, *Examiner.*

368 BOSTON, *Sept.* 25, 1883.

Charles S. Hanks, Esq., of counsel for complainant, says that his authority to act and his management of the case in which these depositions have been taken have been from Mr. E. J. Hill by letter, and that he has in no way been employed by Miner N. Knowlton, who has been in attendance at the hearing.

Attest: JOHN G. STETSON, *Examiner.*

Asa Cottrell, Esq., of counsel for defendants, offers Albert Howe as witness in rebuttal to the testimony of the complainant's evidence in rebuttal and requests the examiner, in the presence of the counsel for the complainant, to administer the oath to said Howe and take his testimony, to be returned into court with, but not as a part of, the testimony taken under the commission sent to the examiner.

369 Charles S. Hanks, Esq., of counsel for complainant, protests against any further testimony being taken by defendants, as he has been acting only for Mr. Hill in reference to the taking of testimony under a commission of the U. S. circuit court, northern district of Illinois, which testimony the examiner therein named has declared closed under said commission. He also refuses and protests against any further testimony being taken, as neither Mr. Hill nor the complainant, Mrs. Hoyt, nor himself has received any notice of any desire to take further testimony. He also protests against further testimony being taken, as it is entirely without the authority of the court authorizing testimony to be taken.

The examiner rules that it appears from the commission under which he is acting that the circuit court wherein the cause is pending has appointed the time for taking evidence between the parties. As the rule of the Supreme Court applicable to the circuit courts provides that his powers under this commission to take evidence for defendants has expired, and that he cannot act further as examiner under said commission except to make up and seal up said testimony and forward the same to said circuit court briefly, the examiner declines to permit any further examination of wit-

370 nesses before him under the commission of the circuit court, northern district of Illinois, dated July 26, 1883.

Attest: JOHN G. STETSON, *Examiner.*

371 *Report of the Examiner.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EMILY HOYT
vs.
MINER N. KNOWLTON, ANNA HANBURY, MICHAEL ANDREW RORKE, Trustee, *et al.*

To the honorable the judges of the said court:

I, Henry W. Bishop, master in chancery of the said court, to whom, by an order of said court entered herein on the nineteenth (19th) day of October, A. D. 1883, the above-entitled cause was referred as examiner to take testimony on behalf of the said defendants Hanbury and Rorke, and also to take evidence on behalf of said complainant in rebuttal thereto, do hereby report that, having notified the parties interested of a hearing under said order before me, at my office, No. 34 United States Government building,

372 Chicago, on the 23d day of October, A. D. 1883, I was attend on that day by counsel for the respective parties and by

George Birkhoff, Jr., who testified herein on behalf of said defendants Hanbury and Rorke, and whose testimony was duly taken, is hereto annexed, and made part hereof. I was also attended on said 23d day of October, A. D. 1883, and subsequent days by said defendants, Anna Hanbury and Michael Andrew Rorke, and also by James Felch, E. J. Hill, and Olive A. Martin, each of whom testified herein, and their testimony was duly taken and is returned herewith.

All of which is respectfully submitted.

H. W. BISHOP,
Master in Chancery for the Circuit Court of the United States for the Northern District of Illinois.

373 Testimony of Anna Hanbury, taken before H. W. Bishop, master in chancery of said court, on the 23d day of October, A. D. 1883, on behalf of defendants.

Int. 1. Please state your name, age, residence and occupation.

Q. Give your name to the court.

A. Anna Hanbury.

Q. Do you know the complainant, and how many of the defendants?

A. I do not know the complainant. I believe I know all the defendants.

Q. When did you first hear of or see the complainant?

A. I heard of her on the 15th day of February, 1883. I have never seen her.

Q. Shall I ask you to say what month it was? You said March. Are you right in that? Was it March or some other month?

A. It was the day the notice was served upon me, I believe; to the best of my knowledge, it was the 15th of February.

Q. When did you become acquainted with Mr. Knowlton?

A. On the 28th of June, 1882.

Q. Did you and Mr. Knowlton ever speak of the real estate called in the pleadings the Clarendon Hills lots——

Mr. HILL: I object to the question as leading and improper.

374 called in the bill the Clarendon Hills lots and Winthrop Place lots, and when and where?

A. Mr. Knowlton spoke to me of his buildings in Winthrop Place on the 9th day of August, 1882. I spoke to him of the Clarendon Hills property at the same time, place, and same interview, at 281 Michigan avenue, and a proposal was made——

(Objected to.)

Q. State what Knowlton next did and said in reference to this exchange of said property with you.

A. On discussing the property on both sides, and in speaking of my position, he asked me if I had an abstract and deeds of the same; to which I answered I had. Then he asked me for them. I gave them to him, and he read them through carefully, when we

discussed the matter fully, and he asked me if I would not like to make an exchange for my property; to which I replied it would suit me best, providing that I could get what my property was worth or anything near it, as my circumstances were such that I would appreciate the income. He said that would be just exactly the thing for me. I declined to discuss the matter further until I had written to Boston about it and had received the advice of my attorney there in regard to valuations, &c. I did not tell Mr. Knowlton that I would tell said attorney that I had had an
375 offer of exchange until he, Knowlton, advised himself fully in regard to my property. I did tell him that I would get a more complete abstract on that day. He returned on the next day, the 10th, in the afternoon, and in a very hurried manner excused himself for calling so soon again and asked me if I would object to his taking my deed or rather the deeds of the property. I answered, "No," and he promised to return them without fail. On the 15th he again proposed an exchange, when I asked him if his property was free and clear. To this he answered, "There was no mortgage upon it." Then we discussed the matter at full length. He persisted in asking me to go to the West Side to see his property, which I refused to do until he informed himself in regard to mine. He stated the advantages of the income; that he desired to dispose of his property; that he was wealthy and could afford to keep my property until such time as it would bring him a suitable price, I having informed him from the beginning that it would not be sold and could not be sold at a reasonable price. I told him further that the property was in Roxbury, a new portion of the city of Boston, in the 23d ward, and gave him all the particulars in regard to it.

Mr. HILLS: I object. I want to know what she said. I want to know all the particulars. She says she gave him all the particulars. I want to know what they are.

A. I spoke in regard to its not bringing its value at that
376 time, as property was then considered low. He said it made no difference; that he was wealthy, a fact which he brought forward on every occasion possible, and that he could hold the same until he could sell it at a better advantage—for years if necessary.

Q. Mrs. Hanbury, at that interview or shortly afterwards did you tell Knowlton to do anything, or did Knowlton tell you to do anything?

Objected to as leading and incompetent and not a proper question.

A. During that interview or the one immediately after, the day or the second day after I told him that he would have to inform himself in regard to my property before I gave the matter any further consideration, when he asked me to go to the West Side and see his property I declined and told him I certainly would not go until he had informed himself about mine; that I was not competent to make an exchange without referring to somebody who understood the matter better than I did; that I did not know the

value of my property in Boston, and would have to ask my attorney in Boston and would write and ascertain all the particulars. When you ask me what Knowlton did—he asked me to send for a more complete abstract, which I did on the 9th, as I have stated.

Q. On the 12th of August had you an interview with Knowlton?

377 A. I believe it was the 11th or 12th; after the 10th. I could not positively say when he again called and urged me to make the exchange, when I replied, I would not do so until he would inform himself in regard to mine, and, further, that I would not enlighten my attorney in regard to the particulars of the exchange until he, Knowlton would so inform himself. Knowlton called again on the 15th.

Q. You told him you would write to Boston?

The style of examination objected to.

A. I wrote for the abstract on the 9th.

Q. On the 10th of August you had an interview with Knowlton?

A. I believe I had.

Q. Did you or did you not tell him you had written to Boston to your attorney?

A. I told him I had written for the abstract. I did not tell him I had written my attorney in regard to the exchange.

Q. What did Knowlton tell you, if anything, on the 12th or some days after, in reference to this matter?

A. On the 15th of the month he returned the papers, as agreed, and then informed me that he had written to Boston to a number of persons in regard to this property. He did not say to whom he had written. He said that he had written to a number. I asked him who they were. He did not give me the names, but said they were real estate men.

Q. Well, what else did Knowlton do or say at that time, the 15th?

378 A. He urged that I should go to the West Side and see his property, something that he did on every occasion he called, and put forward the fact as well that he could afford to keep mine. He urged me to make the exchange and give him deeds of the property, to which I replied that I knew nothing about the value of my property and told him I should not entertain any such matter until he would inform himself fully and faithfully in regard to mine, and then, and not till then, would I write to my attorney in regard to the exchange, and I did not write until he informed himself about the matter. He showed me a letter on the 21st of the month which he said came as a reply to one of the number that he had written. I don't know that he told me the letter came from Mr. Heber at that time, but he held the letter and read extracts to me from the same and stated that the contents were satisfactory to him.

Q. To Knowlton?

A. To him, Knowlton, and that he had now satisfied himself in regard to mine, and that he hoped I would go to the West Side and

see his property without further delay, to which I consented on the 21st, and we made an agreement to meet the next day, in the afternoon.

Q. I will ask you, Did you meet him?

A. I did. I met him at the corner of Wabash avenue and Randolph St.; took a car and went to the West Side, to Loomis St.; from there walked to Taylor and west on Taylor to Winthrop
379 Place; walked north on Winthrop Place to No. 20, where Mrs. Linsley opened the door, and he told her that this lady, meaning myself, was there with a view of looking at the property with the intention of purchasing, and asked permission to look through the house, to which she kindly consented. We went through the house superficially; then afterwards went to No. 18 and went through that in the same superficial manner. While going through that he constantly and without cessation praised his handiwork; praised how the house was built; that it was the best work, and I could see what good material he had put into it, and kept on talking and complimenting matters very much, to which I made no reply. We came out and went north a block, north on Loomis to the first street to the right, turned to the right to Throop St., and walked on Throop to the corner of Van Buren, where I asked to be excused from walking further, as I was very tired, and he said he ought to have brought a carriage. We entered the street car; had gone about two blocks, when he said, "You do not seem to be prepossessed with my property." I said, "My silence is no index to go by, as I am not feeling well and am very tired." He asked me if I would write to my attorney in Boston, which I had not done, about it; to which I replied I would; then nothing more was said in regard to the property until we got to the corner of Randolph
380 and 5th Ave., as near as I remember, when he said, "Cannot you give me some idea in regard to it?" I said, "No; not until I should have been advised by my attorney in the city of Boston." We reached the corner of Wabash and Randolph, when we got out of the car to go home. I said, "I am in a hurry and you will please excuse me." His last request was that I should write to my attorney in Boston that evening. I then went to my home, on Michigan Ave., but did not write the letter until the following day, at 11 o'clock.

Q. When did you next see Mr. Knowlton, and state what was said? This trip to the West Side—was it on the 21st or 23d?

A. I said he called on me with the letter from Heber on the 21st. We went to the West Side on the 22nd. He called again in the afternoon of the 23d. We went to the West Side on the 22nd day of August. He called on the 23d, in the afternoon; asked me if I had written; to which I answered that I had; that I had not kept my promise, but that I had written the letter that morning, at eleven o'clock; that I had had company the evening before and could not keep my word. Then he recommenced his persuasions in regard to my making the exchange with him without waiting further; to which I said, "No;. I should not do it until I heard from the city of Boston, from my attorney." He talked and went over the same ground and said

that my position being such, keeping a boarding-house, that the
381 income from this property would be quite an acquisition; that he would take care of it; that he would do everything in the best manner; told me the many advantages of it; that there were nice people there, and that it would be (complainant's counsel objects to the method of examination and to the answer as giving the witness' conclusions instead of stating facts) a handsome income for me in my position. The interview closed with the understanding that we should wait further action in the matter until I would hear from my attorney in Boston. On the following day, to the best of my recollection it was the 24th, Mr. Knowlton called again; informed me that he had received a letter from Mr. Knoghts, of Boston. He said the letter was not so favorable as the former one, and that it put a new phase on the whole proceeding, to which I replied there was no harm done; that I had not given the matter consideration, and did not intend to until my attorney's reply would reach me. Then he stated that the mortgage that he had spoken of as having run out in June might be kept alive and it would be just about an equal exchange, to which I replied, "No; there is $1,000, all told, against me in Boston, and you would have $1,800 mortgage on yours; I will not do it." He answered back, "You know
382 I have loaned you $500, and that with the thousand dollars would make it $1,500, leaving only $300 difference in my favor." I told him, "No; I should not make the exchange on those conditions; that we would drop the matter," and we did drop the matter, as I supposed, for good. Mr. Knowlton called again and again, very many times; I cannot recollect them all; always trying to prevail upon me (objected to as to what Knowlton way trying to do) to reconsider this matter. I believe it was the 28th of August that I received my attorney's letter, and on that day or soon thereafter Mr. Knowlton called and asked me if I had received a letter. I told him, "Yes," and that my attorney discouraged——

Objected to as no testimony is admissible as to the contents of that letter.

Q. What did you tell Mr. Knowlton as to the contents of that letter?

Objected to, as the letter is the best evidence.

A. I told him my attorney said my property could not burn up or blow away, and that it certainly would never be any lower than it was then, and advised me to keep it, and to place no reliance upon the words of Chicago men, because they told the biggest stories about their property of any people in the world, or some such thing as that. Mr. Knowlton replied that if I had written any such letter to him, and if he was my attorney, he would have written a more severe reply. He stated that my attorney in Boston was
383 right; that the management of transactions of that kind in the city of Chicago was not such as they were in the city of Boston. He said, further, that in the courts here that people of refinement were not successful; that it was only the roughs of the city

that gained their points, but he said, "I assure you the title to my property is all right."

Q. What next occurred at this time that you had the interview with Mr. Knowlton in reference to this property?

A. He then asked about the exchange. I told him that I was busy preparing my two little girls for school and could not give the matter further consideration on that day, but if he would come in in a day or two later, or when it suited him, I would see him in regard to it. I believe he called again the next or the second night after. I can recollect the fact that we had company in the front parlor and he went in the back parlor and sat there and discussed this matter until 11 o'clock, as near as I can remember, when he left with the understanding that I should be able to give him more time. I believe on the first or second day of September, in regard to this matter——

Objected to as to the understanding of the parties.

Objected to counsel's dictating or instructing the witness.

A. I believe it was the 2nd day of September—I believe it was Saturday—when he called and we had a partial understand-
384 ing without coming to any terms. He was to call again on the 4th. He called on the 4th. He had proposed the exchange on conditions to be carried out, but I had not concurred in it, but on Monday I said, "Mr. Knowlton, I will make the exchange on those conditions, provided you will do this," meaning that he should pay a certain judgment against me in the city of Boston for a sum which I do not know now and didn't then, and pay my attorney's fees. I told him the sum would come within $200, and with the mortgage might be $1,000. He said he thought I ought to pay the taxes, to which I replied I didn't think I ought to; but the matter finally stood in this way—that if after the payment of my attorney's fees anything was left it should go towards paying the taxes on the Clarendon Hills lots; if after paying the attorney's fees no money was left he was to pay his own taxes and the mortgage he was to settle himself, and the understanding was that he was to pay it when he went to the city of Boston. I did not ask him to, but he said he would. We came to the understanding that afternoon, when he said he would call again on Thursday and let me know if the matter could be concluded. Thursday evening, the 7th, he called and told me he had made up his mind, as he had done on each and every occasion before; that it was the best thing in the world for both of us, and that he would conclude the exchange, to which I answered, "Very well." He said, "I will draw up the papers
385 and you can sign them." I said, "No, sir; I will do nothing of the kind." I said, "I will see my attorney." He said, "It will only cause you expense; it is unnecessary, and I don't care about it." I replied I felt incompetent, and would do nothing until after consulting my attorney, who had been out of the city, having been called away. On the 21st I called at Mr. Rorke's office, and as he was still absent he was entirely ignorant of my desire or inclination in this matter, and I would have to see him before Knowlton would

enlighten him as to my intentions. We separated with the understanding to meet the next morning, at half past ten o'clock, at 80 La Salle —, room 7, at the office of Mr. Rorke; but just as I was about to leave my house the next morning Mr. Knowlton entered and said he had drawn up the contract and wished me to sign it. I said to him I would do nothing of the kind; I must see my attorney. He made some objection to going to my attorney's office, to which I replied, "If you don't wish to go to my attorney's office we will say nothing more." Finally he saw (objected to) he could do nothing definite. (Objected to.) It was not signed there. I did not sign the paper. I took the contract, took a car, and went to 80 La Salle St., to room 7, having told Mr. Knowlton that it was necessary for me to have one-half hour with my attorney
386 before he entered his office. I went to my attorney, showed him the contract drawn up by Mr. Knowlton; also enlightened him.

Objected to as to the word "enlightened."

Q. When Did Mr. Knowlton afterwards meet you in the office in connection with that business of the 8th of September?

A. He met me at half past ten at the office of Mr. Rorke; both parties.

Objected to.

Q. What did he, Mr. Rorke, say?

A. He said that the contract ought to to be drawn out in legal form, to which both parties consented. He said he could not prepare the contract that forenoon, as it would take some time, and there were some papers necessary to make it out in proper form, and he said Knowlton would have to furnish such papers so as to prove his ownership. Mr. Knowlton, I believe, had to go three times. (Objected to as to what witness believes.) I believe he had to go three times—I am positive he went twice—to secure such papers to enable Mr. Rorke to make out the contract desired. The contract was not completed until after noon, at which time it was signed by both parties, and Mr. Knowlton said he would draw up the deed for me, and Mr. Rorke said he would prefer to draw up the deed, and said to Mr. Knowlton, "I will not charge you for the deed. I prefer to make it out for my client," to which Mr. Knowlton said little. Mr. Rorke said he would know better what the contract required, and I believe he replied,
387 "It would be all right." (Objected to.) After the signing of the contract—I was sitting at the inside of the table—I passed around to where Knowlton was sitting, at the other side, and I said, "Mr. Knowlton, notwithstanding that I have never said a word to induce you to make this exchange, and you know I have always told you that this property would not sell to-day, at the present time I wish you all the success in the world;" to which he replied, "Thank you, Mrs. Hanbury; I can keep it for years if necessary."

Q. Do I understand you to say that this transaction occurred on the 8th of September which you are speaking of now?

A. The contract was signed on the 8th of September. I believe the day was Friday, in the afternoon.

Q. Last year?

A. 1882.

Q. Now, between that day and the execution of the deed mentioned in the pleadings here, what time elapsed?

A. The contract was signed on the 8th, to the best of my knowledge (objected to), and the deed was signed on the 28th.

Q. Now, between those days, did you and Knowlton again meet at the office of M. A. Rorke & Son?

A. I don't think we did.

Q. On the latter date where did you and Knowlton meet, and what was the business transacted, and before whom?

A. On the 28th of September, 1882, at the office of M. A. Rorke & Son, 80 La Salle St., and the business transacted was the signing of the deeds of exchange, as I understood before I reached
388 there. On reaching the office I found the deeds to be made out—warranty deeds—and spoke to my attorney, Mr. M. A. Rorke——

Mr. HILL: Was Knowlton there? If not, I object.

Mr. Knowlton and Mr. Rorke were both there when I objected to the deeds, and Mr. Rorke stated the consideration was merely nominal; that Mr. Knowlton had come to him on the 26th and requested him to make warranty deeds, and that he had made such deeds in order to please Mr. Knowlton. I had supposed they would be deeds of exchange. I did not understand (objected to as to what witness did or did not understand, and facts called for), and the matter had to be explained to me by Mr. Rorke. I was not pleased with the deeds, as I had never understood a consideration with Mr. Knowlton. That was the first time I knew or heard of a consideration in those deeds. Mr. Rorke asked Mr. Knowlton in regard to the $1,800 mortgage; asked him for the receipts, when Mr. Knowlton replied, "The interest is paid until October 1st. I have made a reduction of said interest in favor of Mrs. Hanbury; her first interest will come due on the first day of April, 1883." Mr. Rorke said that he ought to have the receipts, to which Mr. Knowlton replied, "Everything is all right, Mr. Rorke; it is just as I say; there is no underhand work; Mrs. Hanbury will trust me;" when Mr. Rorke looked at me and I nodded my head, meaning "Yes." I then said to Mr. Knowlton, after the deeds were signed, "I hope, Mr. Knowlton, that
389 you will take my advice and not dispose of this property immediately;" when he replied he would keep it for years if necessary. I never failed to inform him that it was not the time to dispose of the property on each and every occasion. I told him that he could not sell the property at any reasonable price.

Q. When did you next see Mr. Knowlton?

A. I saw him that evening, at my house, 1328 Michigan Ave., and the next day or the second next day again.

Q. What transpired then, if anything?

A. He called there in regard to some furniture, I believe.

Q. Was it in reference to this business of yours?

A. When he first entered the furniture was discussed. In the meantime we had discussed his going to Boston. I told him that I would give him a letter of introduction to Mr. Bamford, Mr. Knowlton having informed me he intended to pay off the mortgage immediately; and I was to give him said letter of introduction for the purpose of enlightening him as to where he should go and to whom he should apply to pay off the mortgage. I read the contents of said letter to him, when he asked if Mr. Bamford knew——

Complainant's counsel objects to any testimony on the part of the witness concerning the said letter of introduction, for the reason that it has not been put in evidence by the complainant nor produced by the defendant-, and the letter is the best evidence of the contents.

A. He said: "Does Mr. Bamford know what the property cost you?" To which I replied: "He did not." He said, Knowl-
390 ton said, I might possibly exchange that property back for Chicago property, and he would like me to write a letter of introduction that would lead him to convey the impression to any one that might apply to him that the property cost ten cents a foot. He said to see that the deeds were made out for more than the actual price. I could not find the two deeds at the time, but said I would look for them. He said that a high estimate would make the property appear more valuable, and that sellers could make concessions in favor of the buyer. He said that under the circumstances the seller could make concessions in favor of the buyer. I told him the property had not cost me as much as Mr. Page's deed, and that I did not care to write any such letter.

Q. Was that all that occurred on this occasion—the night of the 28th—after the deeds were signed?

A. All that occurred that evening.

Q. What occurred the next day, if anything? When did you next see him?

A. I believe it was the next day, the 29th, but I am not certain whether it was the 29th or the 1st day of October. The notes are distroyed or I could tell better. Mr. Knowlton loaned me $175. I signed the note without reading it. He reserved out of the $175 $12.50 for one month's interest on $500. He reserved at the rate of 2½ per cent. for one month on the $175. He reserved money (objected to as incompetent and immaterial) to pay for what insurance the
391 man would charge for insuring the contents of 1328 Michigan Ave., at $1,000, and also for insuring two of the houses at the West Side, he, Knowlton, having proposed on the previous evening to insure the said property and act in the matter, to which I consented. He took a list of what was to be done, and I think *they* were two of the West Side houses and my furniture at 1328 Michigan Ave. insured at the time. He attended to the whole business and brought me back his statement. He gave me, as near as I can remember, $135 out of the $175. I believe there were six or

seven cents then due him on what he had attended to. I think I offered him the money. I don't know whether he took it or not—the six or seven cents.

Q. Now, let me ask you, after that evening of the day when this business was concluded when did you see Mr. Knowlton again?

A. I believe it was the 30th day of October, in the evening. I believe the evening was Monday; I am not certain about the 30th of October. I am not aware that he was in town all the time from the 1st of October to the 20th or 30th. I know that he was in Boston. I corresponded with him; received a letter from him there. I do not know what day he reached Chicago, but I do know that it was about the 30th that he called at my house. I was going out to spend the evening and he saw me preparing to go, and he said to me, "You are going out, Mrs. Hanbury?" I said, "Yes." He said, "I would like to see you this evening or to-morrow evening." I said, "To-morrow evening would suit me." He said, "Can I
392 call to morrow evening?" I said, "Yes." He called on the following evening. On the first evening he called he appeared pleased, and acted as he had usually done before then. On the second evening he called he appeared just the same when he entered. We discussed his going East. He told me of the trip, of his pleasures, the time he had spent in the country, the narrow streets in Boston, &c., and finally he introduced the topic of business. It was introduced by his asking me if I had collected my rents (all this is objected to as immaterial and incompetent), to which I replied, "Yes; I had collected the rents." He says, "Well, you are more lucky than I have been, for there is some due me yet from some of the parties in the house, and this is only a beginning, and you won't always be able to collect these rents so well; you will always have trouble with the property;" to which I answered that I had had no trouble so far with the tenants, and the trouble that I did have was in putting the property in habitable order, something that I did not expect to find when I bought it, as he had represented everything to be in perfect order. I told him of the expense I had been to and was then incurring attending to the plumbing in the houses. I told him further of the discrepancies that I had found in his statements in regard to the finished condition of No. 18, when he said it was good enough for those that
393 were in it, and if he were building another house he would not build it quite so well. He said, You are but at the beginning; you will have trouble with this property, and you had better let me collect the rents; to which I replied, "No. I had consulted with my attorney and you proposed that prior to going to Boston. I now refuse, because said attorney has informed me that it would invalidate my title to have any one who owned the property formerly have further to do with it." I said further, I have found your statements wanting in every particular from my recent experience. You have led me to believe that this would be a very nice thing and that it would be no trouble for me to collect those rents; further, that the whole proceeding would be very nice, indeed; and I said, Mr. Knowlton, I propose to collect my

rents, and, if I do not collect them successfully, I will have to get married and my husband will collect them. One thing is certain, you never shall, for I will trust no one who has so little principle as you have got; when he jumped out of the chair and said wouldn't I like to trade back again; to which I replied, No; I had all the expense on my hands because of the exchange that I could compete with, notwithstanding I appreciated my attorney's efforts. He was like all other attorneys and required his pay, and I would not and could not incur further expenses; to which he replied, If I had taken his advice I would not have had any attorney's expenses.

After this interview of the night of the 31st Mr. Knowlton
394 asked me for the insurance papers belonging to No. 22 Winthrop Place. I told him they were at the office of my attorneys, on La Salle street, and he could go there and get them, and he left.

Q. When did you next see Mr. Knowlton?

A. He called again the second following morning. I was sick in bed, but he insisted upon seeing me. I finally told the girl to ask him to come upstairs. He came up and said he had been to see Mr. Rorke, and that Mr. Rorke would not let him have the papers without a written order from me, and he produced an order, which I signed, and, as I supposed there was no further occasion for his remaining, thought that he was going, but he stayed and asked me if I would not take charge of 281 Michigan Ave.; that he proposed taking a lease or had taken it, and would furnish the same, to which I replied, "No; Mr. Strauss, who owns the furniture in that house, has been a kind friend to me (objected to as immaterial—all this testimony in regard to that property) and I do not care to see his furniture thrown out," and I didn't want to have anything to do with it, and he replied, "I will give you an interest," to which I answered I didn't want to have anything to do with it. He left, and I did not see him and I have not spoken to him since and do not desire to.

Q. Do you recollect a suit instituted by Knowlton against you in the beginning of November, 1882?

A. I recollect on the 4th I was served with a paper.

395 Q. Do you know this suit afterwards brought by Mrs. Emily Hoyt against yourself, Knowlton, and others?

A. Yes, sir; I recollect it.

Q. How soon after were you served with summons in this suit of Emily Hoyt *vs.* Hanbury and others?

Objected to, the return of the officer being the best evidence.

A. If I said the 15th of March I am mistaken. It was on the evening of the 15th of February I was served with notice.

Q. Has Knowlton taken any and what part in the matters connected with that suit of Emily Hoyt *vs.* Hanbury and others?

Objected to.

A. I should say a part of counsel and attorney. I have seen him write notes. I have seen him approach one of my tenants and abuse

him soundly for not complying with his request, not paying the rent into court. I have known of him (objected to) going to my tenants. I have known, because they told me. (Objected to.) I stated I have seen him abuse one of my tenants.

Objected to. The witness should state what he did.

A. I saw this with my own eyes.

Mr. HILL:

Q. I want to know exactly what he said.

A. I heard him. I was standing at the window. He said he had four or five suits on his hands now and he could stand another.

396 He said it to Mr. Linsley back of his house in the beginning of May last. I have seen him in court. I have seen him attending to the suit. I have seen him manifest pleasure at any point gained for Emily Hoyt, and displeasure for any point gained for Anna Hanbury.

Objected to as immaterial and incompetent.

Q. You said in Chicago. Did you ever see Mr. Knowlton elsewhere than in Chicago?

Mr. HILL: Ask her where.

Q. Did you ever see or meet Mr. Knowlton elsewhere than in Chicago in connection with that suit; and, if so, where?

A. I saw him for the first time on the morning of the 5th of September, 1883, in the office of John J. Stetson, United States court, in the city of Boston. He entered the room in company with Mr. Hanks and Mr. Moses, Mr. Moses being the man who has given evidence in this case for the plaintiff. Mr. Knowlton took a seat at the inside of the table, on the left-hand side of Mr. Hanks. He wrote, prompted, and dictated, I might say, almost every word on the plaintiff's side, and Mr. Hanks was but simply his mouthpiece.

Objected to as immaterial and incompetent.

A. I have also seen him approach my witnesses and endeavor, by whispers, expostulations, and demonstrations, to prove to them that they were doing wrong in testifying for me.

Objected to as being but the conclusion of the witness.

A. I can give the names of the witnesses he approached if

397 necessary. I have seen him take daily the evidence rendered before Mr. Stetson. I have seen him take the same to copy. I have seen the copies partially on the following days, because they were in his writing. On the 7th of September and during the taking of the evidence of O. Sharp I have heard Mr. Hanks in the presence of a number of witnesses state that Mr. Knowlton was his client. I have seen Mr. Knowlton shake his shoulders and admonish him soundly for so doing. I have seen Mr. Hanks get up from the table and sit back in the room because of his mistake. I have seen Mr. Knowlton go to Mr. Hanks' office, on Washington street—I believe the number is 259, and his office is room 39. I have seen him in

company with Mr. Hanks. I have known him to spend most of his time with Mr. Hanks during his stay there, while Hanks was in the city. I have seen him daily attending this case, and never found him absent once. All remarked that were present—(objected to unless Knowlton heard the remark.) I have seen the man place all obstructions——

Complainant's counsel objects to the witness stating any but facts.

A. I am stating nothing but facts—facts that can be verified by every one that was there.

Q. Proceed to say what you saw Knowlton do further in Boston.

A. I have seen him——

Mr. HILL: State exactly what he did.

A. —approach Mr. Bamford and Mr. Page and Mr. Heber,
398 Mr. Sharp, and Rev. Mr. Fales. I have seen him with a man named Sowden, on the morning of the 21st of September, on the front steps of the court-house. They were both apparently discussing——

Complainant's counsel objects to the witness stating what they were apparently doing, and also objects to the evidence as immaterial and incompetent.

A. I have seen Mr. Knowlton strike one hand with the other as he was talking with Mr. Sowden. I have heard Mr. Sowden remark, "Just let me alone; I will fix"—, but I could not complete the sentence, whether it was "it" or "them." I stepped upstairs, into the court-room, and came back down to the stairs to see if they were still there, and found them about midway between the door and the stairs, when I said, "That is a pretty piece of business, for a defendant to be coaching his witness."

Mr. HILL: Did you say that to Mr. Knowlton?

A. To Mr. Knowlton. Mr. Cottrell met me on the stairs, and I turned upstairs. I saw Mr. Sowden and Mr. Knowlton again on School St. on that day, in the afternoon.

Q. On any one of these occasions, when Mr. Knowlton was engaged with any of these witnesses mentioned by you, did Mr. Knowlton observe that you saw him?

Objected to as immaterial, incompetent, and improper.

A. Mr. Knowlton observed that I did see him, and changed his position and became all at once very much interested in the common beyond.

399 Q. Before the making of the contract, on the 8th of September, 1882, did Mr. Knowlton tell you or not that he had, between the 9th of August and that date, been to see the property at Clarendon Hill, or what did he say, if anything?

A. He did not say he had been to see the property, but he stated, in the office of M. A. Rorke & Son, he had satisfactorily informed himself in regard to it.

Q. In any of those interviews with Knowlton prior to the making

of this contract did you recommend him or did he say that he would go to Boston to inspect this property?

A. I asked him on each and every occasion to go to Boston and personally observe the property; also institute inquiries and inform himself, as people generally do before they make such trades.

Objected to as improper.

A. I told him as soon as he informed himself, not before that, I would be advised by my attorney in Boston what course to pursue, but not until then.

Q. Did those conversations occur prior to the time he showed you the letter he had received from Boston—the first letter?

A. These conversations occurred prior to the time he showed me a letter from Boston and after until the matter was completed, especially until the 21st, when he produced the letter which I know to be Mr. Heber's letter.

Cross-examination by Mr. HILL:

Q. Did you speak to Mr. Knowlton while he was in Boston?

400 A. No, sir; I do not think so.

Q. I thought you said, in answer to an interrogatory, that you spoke to him on the stairs when he was talking to Mr. Sowden?

A. He did not answer me. I said that it was a pretty piece of business for a defendant to be coaching his witness.

Q. You spoke to him, did you not?

A. I spoke to him on the stairs.

Q. I thought you said in your direct examination you never spoke to him?

A. That is a mistake. I did make that remark on the stairs to him.

Q. When did you first come to Chicago?

A. I came to Chicago about fifteen years ago.

Q. How long did you remain here at that time?

A. I remained here. I travelled with my husband——

Q. Answer the question.

A. I do not exactly know the length of time I remained here. I have no particular account of the time.

Q. Where did you go from there?

A. I went from here to St. Louis.

Q. How long did you stay in St. Louis?

A. A short time.

Q. Where did you go to from there?

A. I think I went from there to New York. My husband took in different places between there and New York.

Q. How long did you stay in New York?

A. I had no particular recollection of the exact time. We travelled almost constantly for 7 years.

Q. Where did you settle down?

401 A. Our permanent home during that time was in Boston. We settled down there, I believe, in 1870.

Q. Whereabouts in Boston did you live in 1870?

A. I think it was 23 Beacon street.
Q. What was your husband's name?
A. J. D. Hanbury.
Q. Where is he now?
A. I do not know his present whereabouts.
Q. How long since you have seen him?
A. Two years the 23d day of last August.
Q. You say you settled down in Boston in 1870; how long did you live there after that?
A. We lived there on and off for years.
Q. How long?
A. I could not state.
Q. When did you leave Boston?
A. I left Boston on the 29th day of March, 1881, for the city of Chicago.
Q. Did you come to Chicago on the 29th of March, 1881?
A. I left Boston on the 29th and went to Concord, and left Concord on the 31st and arrived here in Chicago on the 1st day of April, 1881?
Q. Where did you go to live when you came here?
A. 281 Michigan Ave.
Q. Who kept the house at that time?
A. Mrs. Gardner.
Q. How long did you stay there?
A. Until the 21st of September, 1882, I believe.
Q. Between March, 1881, and 1870 were you not in Chicago?
A. I was in Chicago at different times between 1870 and 1882. I was here a number of times. I cannot recall how many times or when. We came here very frequently, indeed.
Q. Before leaving Boston where did you live in Boston?
402 A. Before leaving Boston I lived at Mrs. Rand's, 23 Beacon street, and for the last two months before leaving at the United States Hotel, Boston.
Q. Where before that?
A. I lived for four months at 74 Temple street and for one year before that—that is, from the 15th of October, 1878, until the 15th of October, 1879—I lived at No. 9 Temple St.
Q. Before that where did you live?
A. When we were travelling I lived in Cambridge.
Q. Whereabouts in Cambridge?
A. 21 Forrest St., North Cambridge. I lived there from July, 1874, until the same month, I believe, 1876, except while we were South, during the winter.
Q. Do you know Mr. George O. Whiting?
A. I do.
Q. When and where did you first meet Mr. Whiting?
A. I do not recall when I first met him. I know I met him in regard to a transaction of real estate.
Q. What was the transaction? Detail it.
A. It was the exchange of my Cambridge property for this property in Clarendon Hills.

Q. Describe your Cambridge property.

Objected to as not cross-examination.

A. The Cambridge property is a frame house; I believe the foundation is stone and mortar; 2 story and basement, with about—I think there is fully a quarter of an acre of land; I would not be certain whether it was more or less; bay windows on the parlor floor; back and front parlor, dining-room, kitchen, and pantry on the first floor. On the next floor six rooms, including bath-room. On the next floor four rooms.

403 Q. How much incumbrance was there on this property at the time of this exchange?

A. $6,000.

Q. It had long been due, had it not, when you made the trade?

A. This money when I made the exchange?

Q. Yes; the money was due, was it not?

A. I do not think it was; I am not certain as to that. If I remember correctly the mortgage was to run just as long as I wanted, and that privilege was to be extended to the purchaser, I believe.

Q. That was Mr. Whiting?

A. Mr. Whiting.

Q. What did you get for this property?

A. I got $13,964.

Q. What did you get in exchange for the property?

A. The Clarendon Hills property.

Q. Describe the Clarendon Hills property.

A. I know it is unimproved. There are lots mixed up with others—27 of them. They lie between Beach and Charles street and some the other side of Charles; some on Poplar street and some on James street.

Q. Where is Clarendon Hills?

A. It lies about six miles distance from Boston, on the main line of the Providence road—that is, from the State house, in Boston. Clarendon Hills is a part of Boston, 23d ward, West Roxbury.

Q. When did you first see this property at Clarendon Hills?

A. I first saw this property in the summer of 1876, I believe.

Q. Was that the time when you bought it?

A. I bought it that year.

Q. Did you examine it carefully before you bought it?

404 A. I don't think I understood the examination of property. I had those that did understand the examination of it examine into it.

Q. Did you examine the property yourself?

A. I was there and looked at it twice.

Q. State how you went to get to it.

A. By carriage, by the way of Washington street, through Beech St. to Poplar.

Q. What time of year?

A. I believe it was in July.

Q. When did you last see that property?

A. I saw it the last time on Saturday evening, the 8th day of September last, I believe.

Q. What changes have been made in that property since you bought it up until now, if any?

A. On the property itself there have been no changes. There have been many changes made in the immediate neighborhood, which improved the property very much.

Q. What are they?

A. The introduction of water, extra lights, lower fares, more frequent trains, primary school, and mail delivery.

Q. Any place on this property where they could deliver the mail?

A. There is no place on the property where there is occasion to deliver but one house, but there is a place both sides of it where the mail is delivered.

Q. Ever see the mail delivered?

A. I have been there when I saw the mail man there at the box.

Q. How far are these lots from the depot by the nearest traveled route?

405 A. By the nearest traveled road, I believe, from information and seeing——

Q. I want your own knowledge; I do not want any information.

A. I could not tell you, because I have not measured it.

Q. As near as you can judge?

A. I should say between 2,000 and 2,200 feet.

Q. How far is it by the nearest traveled road by carriage to the station-house at Clarendon Hills from this property?

A. You can go direct from the property to the station, excepting the crossing a fence, and there was an opening there. The usual custom of the people residing there is to go through Dale St. to the depot that way.

Q. Question repeated.

A. If you must go to the station it is necessary to go around and cross the track further on and return and come back to the depot, as Clarendon Hills station is across the line, in Hyde Park.

Q. Describe what streets, if you have got to go by carriage.

A. You can go by carriage on the other street, but cannot enter the depot proper. I think the majority of the people——

Q. I do not want that part of it. Answer the question.

A. I cannot tell the distances.

Q. From the time you purchased it down to your coming to Chicago, in 1881, how often had you visited these lots at Clarendon Hills?

A. I could not say how often; not very often.

Q. Frequently have been, have you not?

406 A. No, sir. I was not there often.

Q. Been there a dozen times, haven't you?

A. I have not.

Q. Been there twice?

A. Probably twice, and probably three, five, or seven times.

Q. About seven times?

A. I am not positive.

Q. You had an auction down there one time, didn't you?
A. I had an auction. I authorized one to be there. I was one of the parties there.
Q. You bid on the lots, did you not, at that auction?
A. No, sir; I did not.
Q. You had some one to bid for you?
A. I had a lady friend bid in those that prices did not suit.
Q. Did you sell one lot at that auction?
A. I objected to selling any of it——
Q. Did you sell one lot at that auction?
A. No, sir.
Q. Have you ever sold a lot to anybody since you owned it except to Mr. Knowlton?
A. I have never sold them to anybody until I sold them to Mr. Knowlton.
Q. When was this auction?
A. To the best of my knowledge, the auction was the latter part of June, 1879.
Q. You put the mortgage on the property, did you not?
A. Yes, sir; there was a mortgage.
Q. How much?
A. $800.
Q. When was that due?
A. I believe it had been due some time.
Q. When you met Mr. Knowlton?
A. No; it was due to Mrs. Cheever, and I had the mort-
407 gage assigned to Mrs. Fales, of Waltham. I am not aware it was specially due at the time I sold the property to Knowlton.
Q. How much was the mortgage?
A. $800.
Q. What was this judgment that you testified to that you owed?
A. A judgment of Mr. Blaisdell's.
Q. How much was that?
A. I don't remember.
Q. $100, was it not, pretty near?
A. I don't know.
Q. What was it for?
A. It was for the rent of a house that I had taken with the intention of letting rooms, which I gave up immediately, because my friends interfered and would not allow me to keep it.
Q. When did you do this?
A. I cannot recollect the date.
Q. As near as you can remember.
A. It might have been some time in 1878.
Q. You owed Mr. Blaisdell this money in June, 1882, did you not?
A. Yes, sir. I still owed the money in 1882, at the time of this exchange.
Q. You never paid him?
A. No; I never paid him. It has been paid.

Q. You never paid this mortgage?
A. I never paid this mortgage.
Q. How about the taxes on the property? Did you ever pay any taxes on the property?
A. I paid taxes in 1877 and '8. I do not think I paid any taxes afterwards.
Q. What became of the taxes on the property?
A. The taxes were abated through the influences of friends.
408 Q. For what years were the taxes abated through the influence of friends.
A. The taxes of 1879, I believe, were abated in the year 1880 and the taxes of 1880 were abated, I believe, in the year 1881.
Q. You state you came to Chicago in March, 1881; you remained here from March, 1881?
A. No, sir; I did not come to Chicago in March, 1881. I arrived on the 1st day of April, 1881.
Q. That was over a year before you saw Knowlton?
A. It was a year and very near three months before I saw Mr. Knowlton.
Q. What were you doing in Chicago from that time down until you saw him?
A. I was keeping house at 281 Michigan Ave.; keeping boarders.
Q. How long did you keep house?
A. From the 1st of May, 1881, until about the 21st of September, 1882, as near as I can remember.
Q. Who owns the house at 281 Michigan Ave. or who did own it?
A. I cannot recollect the name, but I am well acquainted with it.
Q. From whom did you lease?
A. I leased of Mr. Cooper, on Dearborn St., No. 115.
Q. What was the rent per month?
A. $100.
Q. Who furnished the house?
A. The house was furnished when I got it. I bought the contents of Mrs. Gardner.
Q. How much was the bill of purchase?
A. I could not give you the exact figures; somewhere about $5,000.
Q. Any incumbrance on that?
409 A. She had paid but very little on it, between six and seven hundred dollars, which I paid back to her at the time I bought the property.
Q. Was there any incumbrance on the furniture?
A. The furniture was incumbered.
Q. To whom was it incumbered?
A. Mr. Strauss, 58 West Madison St.
Q. A furniture man?
A. Yes, sir.
Q. How much was that incumbrance?
A. I don't remember; I could not state.
Q. When did you say you first met Mr. Knowlton?
A. I met Mr. Knowlton on the 28th of June, 1882.

Q. Where did you meet him?
A. Corner of State an- Madison Sts.
Q. How happened you to meet him at the corner of State and Madison?
A. I had advertised for a loan of money and he was one of the number that applied. I replied to his note the day before. It got detained in reaching *his* destination—that is, I believe it did—and I called where he addressed the note and found a party who informed me that he had written me and that I would receive the note on my return home, which I did.
Q. Have you that note?
A. No, sir; I did not preserve it.
Q. Who made the appointment to meet at the corner of the street?
A. I did; I suggested it.
Q. What did you do when you met him?
A. We took a car.
Q. Who introduced Mr. Knowlton to you?
A. Mr. Knowlton had my letter in his hands. It was
410 understood he should present the letter I had written.
Q. What did you do?
A. We took a car and went to the West Side, to Mr. Strauss's office.
Q. What did you go there for?
A. To see some diamonds that belonged to me.
Q. What was the object of your interview with Knowlton?
A. Mr. Knowlton was the one who desired to make the loan and I was the one who wanted the money. I went with him to see the diamonds.
Q. You were in need of money at that time, were you?
A. Yes, sir; I wanted some money or I should not have advertised for it.
Q. Did you get the money from Mr. Knowlton?
A. I got $400 on the 29th of June.
Q. Did you ever pay that money to Knowlton?
A. It has been part of the exchange.
Q. You never paid him any?
A. In that way only.
Q. Only in the exchange?
A. Yes, sir.
Q. You never paid him back the money?
A. There was no occasion for it.
Q. You never paid him back?
A. I did.
Q. Never paid him any money?
A. Except for the bills he paid out for me. I paid him that money. I have also paid him for furniture I bought from him since then at three different times.
Q. Do you know Mrs. Olive Martin?
A. I know a Mrs. Olive Martin.
Q. Where does she live?
A. I don't know.

Q. Where did she live when you first knew her?

A. The last I knew exactly her place of residence was at 281 Michigan Ave.?

411 Q. Did you ever make an appointment for her to meet Mr. Knowlton at your house?

A. I did not make an appointment for her. I made it with Mr. Knowlton to come to my house and informed her the time he would be there.

Q. For what purpose?

A. It was to introduce them, as she desired the loan of a hundred dollars to pay her rent, for which she proposed to give a piano as security. I told her I knew a gentleman who had loaned money at 3 per cent., but that he would favor me at 2½ and would also extend that favor to her.

Q. Who was that gentleman you referred to?

A. Mr. Knowlton.

Q. So you made that appointment for that meeting between her and Mr. Knowlton, did you?

A. Mr. Knowlton asked me in the office of Mr. Rorke where he could see her. I told him when he called at my house that evening, as he said he was going to, I would tell Mrs. Martin she might be there.

Q. You remember a conversation that took place between you and her that evening?

A. She and I talked upon various topics before Mr. Knowlton entered. She was impatient to go home and attend to dinner, and when Mr. Knowlton entered she could not remain. She had to go home and attend to her boarders, and she said for Mr. Knowlton to call at her house.

Q. Were not Knowlton and she present at your house together?

412 A. They were present during the time I introduced —, but she left the room immediately.

Q. Wasn't there any conversation between her and you and Knowlton?

A. Nothing outside of the introduction and the money which belonged on the piano, which I told her he would loan her at 2½ per cent.

Q. You remember of telling her about that trade with Knowlton in the presence of Knowlton?

A. I don't remember anything of the kind.

Q. Was not Mrs. Martin at that time finding fault with you concerning the manner in which the trade had been consummated between you and her?

A. No, sir; Mrs. Martin and myself were the best of friends until this affair between Knowlton and myself. I treated her with the utmost kindness and done everything for her. I never made a trade with Mrs. Martin; it was done by others.

Q. Was not there a discussion in Mr. Knowlton's presence between you and Mrs. Martin in which you told her you preferred to do business with principals rather than with agents?

A. I do not recollect any such conversation. I do not think there was time to so state. She was in very much of a hurry long before he entered. I could not very well have said so, inasmuch as the agent was the one that transacted the business; that would be inconsistent.

Q. What was said at that interview between you and Mr. Knowlton in the presence of Mrs. Martin?

A. I do not recollect a word further except the introduction.

413 My recollection is she left immediately, because I know she was exceedingly impatient to go.

Q. When was this interview?

A. I could not say whether it was the 28th or 29th of September that Mr. Knowlton was there and that he met Mrs. Martin; it was immediately after the signing of the deeds, but what evening I could not tell.

Q. You remember telling her you and Knowlton had made a trade, do you not?

A. I don't remember anything of the kind.

Q. You never told her, did you?

A. Well, I cannot say I never told her. I don't recollect any such conversation; I should be perfectly willing to admit it if I did.

Q. Didn't you tell Mrs. Martin you and Mr. Knowlton had made a trade and Mr. Knowlton took your representations in regard to the property in Boston?

A. I do not recollect any such statement. That would not be true, inasmuch as I had information then and long before he had fully informed himself, on his own statement, satisfactorily and by letters; so such a statement would be false if I had stated it.

Q. Do you remember telling Mrs. Martin Mr. Knowlton and you had made a trade and he had never seen your property at all?

A. I do not recollect any such statement. While I may have stated to her we had made an exchange of property, I do not recollect anything of the kind.

414 Q. Are you positive you did not say anything of the kind?

A. I don't recollect saying anything of the kind. I should readily admit it if I did.

Q. Are you positive you did not make any such representation or statement to her?

A. I cannot say I am positive and I cannot say I am not.

Q. What letters did you receive?

A. The letters that he called my attention to I learned afterwards from Mr. Heber and Knight.

Q. Do you know any other letters that he had received?

A. No, sir; he never told me of any others?

Q. Did you read those letters?

A. No, sir; I didn't read them. He read extracts from them to me. He read the extracts from Mr. Heber's on the 21st of August. The second letter, I think, he held in his hand; whether he gave it to me I cannot recollect, but I know he did not give me the first letter, nor did he tell me who it was from, but he did tell me who the second letter was from.

Q. You state, in your direct examination, that you received instructions from your attorney in Boston; have you those letters of instruction?

A. I do not know but I have the letters; I have a number of my attorney's letters.

Q. I wish you would produce them.

A. If I have — I will. I received a letter and showed it to Mr. Knowlton. He read it through, I believe.

Q. Have you the letters with you here?

415 A. No, sir; I haven't.

Q. You told Mr. Knowlton, the first time this property was mentioned, in Boston that he could not sell it, did you?

A. The first time that he spoke of the property was on the 9th of August. On that occasion, as I did on the other occasion, after I told him that I did not think he could realize a fair valuation for it then or in the near future, I never failed to remind Mr. Knowlton of that, and he thoroughly understood it, notwithstanding every statement to the contrary.

Q. I repeat the question and want a direct answer.

A. I did not tell him he could not sell it. I told him he could not sell it for a fair valuation. I never told him that he could not sell it. I told him he could not sell the property then or in the near future, as I had always told him.

Q. Did you tell him why?

A. No, sir; I told him I thought — price of the property was low.

Q. You told him the property was at Clarendon Hills?

A. I told him the property was at Clarendon Hills, and told him it was a part of West Roxbury, 23d ward, in the annexation to the city of Boston.

Q. Told him they were nice building lots and pointed them out?

A. I never spoke of building lots; never made any promises in regard to it. I never knew and do not now whether the build-

416 ing lot is good, bad, or indifferent, any more than the knowledge conveyed to me it was a good investment. I never made any pretenses to him about it.

Q. How much did you owe Mr. Strauss on the 9th of August?

Objected to.

A. I don't remember how much I owed Mr. Strauss at that time.

Q. You owed him $400, did you not?

A. No, sir; I did not, because on the 9th of August my dues were paid up until then. Inasmuch as I had paid him considerable money I was not behind in my payments with Strauss in August at all.

Q. You were behind with him in June, when you first met him, were you?

A. It was not on the furniture.

Q. You borrowed some money on diamonds, didn't you?

A. Mr. Strauss had loaned me $220, and I paid him back.

Q. He had the diamonds?

A. Mr. Strauss had the diamonds, but not when I met Mr. Knowlton and borrowed the money, because I wore them at the time. He had them prior to that at my own request.

Q. Did you borrow some money on the diamonds of Strauss?

A. I gave him the diamonds; there was no written agreement; I got $220; I told him to keep them until I paid him back.

Q. He had the diamonds when you saw Knowlton?

A. I had the diamonds when I saw Knowlton.

417 Q. Had you paid him back the $200 you borrowed on the diamonds?

A. Yes, sir.

Q. That you got of Mr. Knowlton?

A. I paid him back about one hour after Mr. Knowlton let me have the money, at 79 Dearborn St., in the office of Mr. Shields.

Q. Didn't Mr. Shields go over to see the diamonds?

A. He did.

Q. Didn't he go to Mr. Strauss, where the diamonds were?

A. He went to Strauss', but I had the diamonds. Shields went there, but I had the diamonds; I met him with the diamonds.

Q. You carried the diamonds there?

A. Yes, sir; I wore them.

Q. Where did you get these diamonds?

Objected to as immaterial, improper, and not cross-examination.

A. I took them out of a pawn shop in Boston. They belonged to a gentleman who had pawned them. I took them out of there and paid him for them.

Q. You delivered these diamonds to Knowlton, did you?

A. I did not know whether Mr. Knowlton took them into his hands. I know they were put into Shields' safe. I do not know whether it was Shields or Knowlton handled them.

Q. They have been returned to you?

A. Mr. Knowlton returned them to me about the 9th or 11th or 12th of September, immediately after the contract was signed; within a few days, if not immediately.

418 Q. You knew you could not sell this property for any reasonable sum when you sold it to Knowlton, did you not?

A. I did not know I could not sell it. My object in advising him he could not sell it at a fair price was because I believed it would be better to sell in the future. I gave him all the benefit of my knowledge in regard to it. I never praised it.

Q. What did you tell him about it?

A. I told him I did not believe he could sell the property at a fair valuation then or in the near future.

Q. Was that all you said?

A. I told him he ought to go and see for himself what it was.

Q. You say you gave him the benefit of all your knowledge?

A. In regard to the depreciation; I never praised it.

Q. I want to know what you did do.

A. I am telling you what I did.

Q. You state you never praised it. What did you say about it?

A. I told him the property was unimproved and unproductive. It was in the new part of Boston, West Roxbury, at a place called Clarendon Hills. I told him there was 27 lots scattered among others; I told him some of the lots were high.

Q. Did you tell him there was a fence across Dale street?

A. I don't think I knew as much at that time, because
419 I had never gone out in the train to Clarendon Hills before 1879, and then did not stop at Clarendon Hills station, but went beyond. I never have got off at that station to know the fence was there or anything about it.

Q. You say you gave him the benefit of your knowledge in regard to it?

A. Yes, sir; as far as I knew I told him exactly what I believed in regard to it and as the matter had been told to me at the time I purchased it. I told him about the auction sale and the knowledge I had derived from the prices it brought then, and told him I had bought it at less figures than those figures, but did not tell him what.

Q. Did not tell him what you bought it for?

A. No, sir; he never asked me.

Q. You showed him the deed, didn't you?

A. I handed him the deeds on the 10th of August, 1882, at his request. He called for them in the afternoon.

Q. You gave him a letter of introduction to Bamford, and wrote to Bamford in that letter that you paid ten cents a foot for the land?

A. I never wrote such words in my life—that I paid 10 cts. a foot; never said such a thing and never intimated such a thing.

Q. You did not write any such letter?

A. I wrote a letter, but never wrote such words in a letter; never in my life. I have endeavored to secure that letter to prove my own statement of the affair, but the letter was destroyed or taken by somebody.

420 Q. You wrote the letter to Bamford?

A. Yes, sir; but never knew whether Knowlton kept it or delivered it or anything about it until I wrote to Bamford for the letter, as I wished to ascertain the exact date.

Q. Bamford was your agent in Boston?

A. He never attended to any business for me until I signed this mortgage. At that time I left the property in his care to see that the grass was cut and to see that he would sell it; otherwise he never transacted any business for me. I had known him but a short time; about a year before I came to Chicago.

Q. He was your agent at the time you made the trade with Knowlton?

A. He was not, in regard to selling the property; he was acting for me in regard to the grass.

Q. You made an affidavit against—in the case of Knowlton—*against* yourself in the city of Chicago and filed it in that suit, did you not?

A. Yes, sir.

Q. Do you remember what that affidavit contained?

A. Mr. Strauss had the diamonds, but not when I met Mr. Knowlton and borrowed the money, because I wore them at the time. He had them prior to that at my own request.

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Q. Did you tell him there was a fence across Dale street?

A. I don't think I knew as much at that time, because
419 I had never gone out in the train to Clarendon Hills before 1879, and then did not stop at Clarendon Hills station, but went beyond. I never have got off at that station to know the fence was there or anything about it.

Q. You say you gave him the benefit of your knowledge in regard to it?

A. Yes, sir; as far as I knew I told him exactly what I believed in regard to it and as the matter had been told to me at the time I purchased it. I told him about the auction sale and the knowledge I had derived from the prices it brought then, and told him I had bought it at less figures than those figures, but did not tell him what.

Q. Did not tell him what you bought it for?

A. No, sir; he never asked me.

Q. You showed him the deed, didn't you?

A. I handed him the deeds on the 10th of August, 1882, at his request. He called for them in the afternoon.

Q. You gave him a letter of introduction to Bamford, and wrote to Bamford in that letter that you paid ten cents a foot for the land?

A. I never wrote such words in my life—that I paid 10 cts. a foot; never said such a thing and never intimated such a thing.

Q. You did not write any such letter?

A. I wrote a letter, but never wrote such words in a letter; never in my life. I have endeavored to secure that letter to prove my own statement of the affair, but the letter was destroyed or taken by somebody.

420 Q. You wrote the letter to Bamford?

A. Yes, sir; but never knew whether Knowlton kept it or delivered it or anything about it until I wrote to Bamford for the letter, as I wished to ascertain the exact date.

Q. Bamford was your agent in Boston?

A. He never attended to any business for me until I signed this mortgage. At that time I left the property in his care to see that the grass was cut and to see that he would sell it; otherwise he never transacted any business for me. I had known him but a short time; about a year before I came to Chicago.

Q. He was your agent at the time you made the trade with Knowlton?

A. He was not, in regard to selling the property; he was acting for me in regard to the grass.

Q. You made an affidavit against—in the case of Knowlton—*against* yourself in the city of Chicago and filed it in that suit, did you not?

A. Yes, sir.

Q. Do you remember what that affidavit contained?

A. I do not recall the contents of the affidavit.

(Counsel for Mrs. Hanbury produced the affidavit.)

Q. Had you any other diamonds than those which Mr. Knowlton had?

A. I had a set of solitair-s that I had partially sold to a lady in Boston, and she then wore them.

421 Q. Did you say anything to Mr. Knowlton the first time your property was mentioned that you had property in Boston? You spoke about mortgaging it, did you not?

A. Mr. Knowlton called—I must tell the story.

Q. Answer the question.

A. I spoke about either raising the mortgage or disposing of some of it.

Q. Did you not know at that time you could not raise a dollar by mortgage?

A. No, sir; I had no reason to think anything of the kind, as I had made no effort to dispose of it since the auction sale.

Q. Do you remember of borrowing any money of Knowlton besides the $400?

A. I received $100; but the date I cannot recall; between then and the date of the contract. I afterwards received $175, as I before stated, he receiving the money to pay for bills for work he attended to.

Q. The property in Boston was entirely unproductive—it produced nothing?

A. Produced nothing.

Q. It was a bill of expense?

A. I never thought of it in that way; it was no expense to me.

Q. You paid no taxes?

A. Not after 1878.

Q. You got those rebated through the influence of friends?

A. Yes, sir.

Q. You wrote to your Boston lawyer to inquire whether you had better make a sale or not, did you?

A. I did not write my attorney until the 23d of August,

422 the day after I went to the West Side and saw the Winthrop Place property, and two days after Knowlton informed me he was fully satisfied in regard to the information he had received in regard to the matter, he having received information on the 21st.

Q. What information did he tell you he received?

A. He received a letter in answer to one of his.

Q. And with what you told him and what he heard from Boston he was satisfied, was he not?

A. He did not say he was satisfied with what I told. I never told him anything.

Q. Didn't you tell him where the property was situated?

A. Yes, sir.

Q. What did you tell him?

A. I told him it was in West Roxbury; it was the 23d ward of the city of Boston. I told him it was unimproved and unproductive.

Q. Tell him that it was on Beach St.?
A. Partially on Beach St.
Q. And partly on Poplar?
A. Partly on Poplar and partly on James and partly on Charles. I told him the streets were not cut through.
Q. Did you tell him exactly how it was situated—the land.
A. Yes; to the best of my knowledge.
Q. What did you say to him?
A. I told him it was located between those streets. I had a map which I gave him. I showed him how it lay. I showed him the contour of the property there ass best I could. He desired to be enlightened in regard to it, and asked me for the abstract of
423 the deed, and I gave him the deeds and gave him mementoes such as I had.
Q. You gave him that map that he testified to?
A. He asked me for it and I gave it to him.
Q. In your affidavit, filed in the superior court December 19, 1882, No. 84543, you state this: "That on the 29th of June last he, Knowlton, lent her $400, taking her promissory note at two months, payable to himself, secured by deposit with him of certain of her diamonds; that on or about the 29th of July last he again called on her to collect his month's interest, amounting to $12, at 3 per cent. per month; that on or about this date she mentioned to complainant that she owned certain real estate in Boston, Massachusetts, and that she had a mind to mortgage it to raise money for present use, as it was not producing any income for her." Is that statement true or false?
A. He called on or about the 29th——
Q. I want an answer to the question—whether that statement is true or false.
A. The statement is true.
Q. Was that the first time you mentioned to him you had property in Boston?
A. I do not recall I mentioned it at that particular date. I recollect he called for the interest, and I told him I was not prepared to pay it. The property question was discussed the next time he called. Whether I made any reference to it on the 29th I do not recollect.
Q. The first time you mentioned it you spoke of mortgaging it if you could?
424 A. The first time I mentioned I should mortgage it I did not say if I could; I supposed I could. The first time, I think, was the 29th.
Q. You then said you would mortgage it?
A. I said I would mortgage it or sell portions of it; that I contemplated so doing.
Q. This statement is not fully true?
A. In regard to his coming to my house it is.
Q. About the mortgage?
A. On or about that time. It does not say the 29th. I could not say it was on the 29th. My affidavit is strictly true.

Q. You state on that occasion, further, "that this affiant reminded me her property was unproductive, and that he could not at that time or in the near future sell her Boston suburban property at any reasonable figure, and that he answered that he knew it, and understood all that, and that he could afford to keep his land for years if necessary."

A. That statement was made on the 9th of August. I do not recall the statement was made fully before.

Q. The first time the property was mentioned?

—. I do not say it was the first time; I am positive it was then.

Q. The first time the property was mentioned to Knowlton—the first time he knew you had bought some of the property—you told him you could not sell it?

A. I told him that on the 9th; that it could not then be sold for what it was worth.

Q. That was before he talked about buying it at all?

425 A. I never told him about that before he wanted to buy it; never said a word about its being unimproved.

Q. How did he know you had bought some property?

A. I told him.

Q. How did he know where it was situated?

A. I told him; told him where it was situated, but nothing further in regard to the improvements or anything else.

Q. You told him it was situated at Clarendon Hills?

A. I told him it was at Clarendon Hills, 23d ward; I never failed to tell him just where it was.

Q. You told him it was at Clarendon Hills?

A. I told him it was the 23d ward.

Q. You told him, then, he could not at that time or in the near future sell your Boston property at any reasonable figure?

A. After he said how would I like to trade for his property I told him I would like to exchange; he proposed such an idea.

Q. You didn't want to sell the property at all?

A. I wanted to sell a portion of it. I had no idea of selling the whole of it.

Q. And he told you then, he could afford to keep it for years, if necessary, the first thing?

A. He told me that on the 10th—he could keep it for years.

Q. Your affidavit says he told you that the first time; do you want to alter it?

A. My affidavit is correct, to the best of my knowledge,

426 and so is my evidence.

Q. You swore to your affidavit?

A. I will say what is right, and you can't alter the case.

Q. You have said this in the affidavit. That is correct?

A. I did not say it was positively on the 29th. I said on or about the 29th. I could not specify dates.

Q. Do you mean you told Knowlton he could not sell it for any reasonable sum?

A. I told Knowlton I had some property, and would either raise money by mortgage or sell a portion of it, and he asked me what it

was, and asked me how I would like to exchange it for improved property in Chicago. I then told him about where the property was situated and all about it, as he desired and was very desirous of knowing. I never volunteered any information to Knowlton. I never went to him or sent for him.

Q. He had never seen the property?

A. I don't think I had a right to think he had seen it, as he seemed to be ignorant of the neighborhood. I told him to go.

Q. You told him about the property—where it was situated?

A. He would not have known if I had not.

Q. You told him right where it was?

A. I told him to the best of my knowledge. It was a new neighborhood.

Q. You had been there six or seven times?

427 A. I had drove there.

Q. You told him about the auction sale?

A. I might not have told him on that date.

Q. You told him before you got through they had an auction sale there?

A. Before we got through with the sale, because the only price I put on the property was through auction sales. I said the property brought at auction six to twelve cts. a foot.

Q. Did you know any of it had been sold at that price?

A. I think one piece sold at ten cents.

Q. Did you tell him how much?

A. Ten cents cash. I don't think I told him that, because I was not sure then. I have only confirmed that in my own mind recently. When my witness testified I thought the witness might make a mistake, and I went to the gentleman and found he had stated ten cts. a foot.

Q. You told Knowlton about the auction sales?

A. I told him of my attempted sale and told him the cause thereof.

Q. What did you tell him of the cause?

A. The gentleman who had charge of it unfortunately took a little — much liquor at that time and came on the scene intoxicated, and that was the cause of closing the sale. I closed it because the matter was so lacking in dignity I would not have anything to do with it.

Q. You advertised it?

A. He advertised it and I instructed him to do so.

428 Q. You used this intoxicated gentleman as a witness, did you not?

A. I have never known him to make a practice of being intoxicated. He is a man that has a great deal of business, and, like many others, he does that, and that time it was my loss. I have never spoken to him from that time until the day he appeared as a witness, nor did I solicit him being a witness.

Q. After Knowlton brought suit against you in the superior court and obtained an injunction you sent to Boston and got evidence, did you not?

A. I believe I was the one that sent to Boston and got affidavits.
Q. You got the letter Knowlton wrote to Heber, did you not?
A. I think both letters—the one written to Heber and to Knight.
Q. You got an affidavit from Mr. Knight, did you not?
A. Yes, sir.
Q. Did you get an affidavit from Heber?
A. No; we got only a letter.
Q. How did you know where to send for these?
A. I knew because my attorney there sought them out, and I had learned in the meantime those that had written. He told me the name- of the parties and I wrote to ascertain who they were. I had met Mr. Knight, but had not known Heber.
Q. You saw Knight's letter, did you not?
A. I think I did. I saw Knowlton produce it.
429 Q. That was so unfavorable all negotiations were dropped.
A. Yes, sir; at that time, until Knowlton renewed them.
Q. It was because that letter was so unfavorable in regard to the property you both concluded to drop the negotiation?
A. No, sir; he did not propose to drop it; I proposed to drop it. He immediately said he could keep alive the mortgage on the West Side and make it an even exchange, to which I objected.
Q. Any discussion about the letter of Knight?
A. Yes, sir; the date he brought it to me.
Q. You said in your direct examination you supposed everything was dropped when that letter came?
A. I suppose it was dropped after the letter came, on that afternoon; not when it came, because I did not understand the contents.
Q. You stated in your direct examination after making the writings in Mr. Rorke's office that you said to Mr. Knowlton, Now, I wish you all the success in the world. Why did you wish him all the success in the world?
A. Well, because of his great anxiety to make the trade and his great perseverance and my reluctance to carry it out.
Q. Why were you reluctant?
A. I was not satisfied. I felt I had made a mistake as to the value of my own property. I did not know anything about the
430 value myself. I had not seen it seen 1879, and had not questioned the value of it till then, and then through him.
Q. Ever try to sell it?
A. No, sir.
Q. You had tried to sell it?
A. Never tried to sell it; never except at the time of the auction sale.
Q. You knew you could not sell it to anybody?
A. I never made any effort.
Q. You didn't get a live bid at the auction sale?
A. We had bids from three to five cents, and I know we had an actual bidder at six cents for the corner, but I said I would not sell either.
Q. How long ago was that auction sale?
A. The last of June, 1879.

Q. Never inquired anything about the value since?
A. No, sir; I had a lawyer's advice to keep it.
Q. Who advised you?
—. My attorney and my friends and those who knew best about the locality.
Q. Why did you wish Mr. Knowlton all the success in the world?
A. I felt very kindly towards him and hoped he would have success.
Q. You knew he had not and hoped he would?
A. I didn't complain of my success. I had not made any efforts to raise any money on it until then. There was no feeling either way.
Q. You told him he could not sell it for any price?
A. I never told him he could not sell it for any price; I told him he could not sell it for any reasonable price then or in the near future; to which he replied he was wealthy an- could afford to keep it for years, if necessary.
431 Q. He made use of that expression the first time you mentioned the property, did he?
A. While he may not have made it the first time, he never failed to put the fact forward that he was wealthy on every occasion, and that he could afford to keep it.
Q. Before he bought it he said he could?
A. Yes, sir; and he said so afterwards.
Q. Kept saying that all the time?
A. Always said that; always made that reply—that he could keep it for years. He told me that he could manage it better than I could, and make better use of it.
Q. What use did he propose to make of it?
A. He did not tell me; those were his words.
Q. Any talk between you about building on the property?
A. I don't think that he talked about building on it; I don't remember any such conversation.
Q. You knew he had never seen the property?
A. I did not know that he had not seen the property—the date of the deed—the signing of it.
Q. You gave him the benefit of all your knowledge in regard to it?
A. When he requested; never otherwise.
Q. You told him what you paid for it?
A. He never asked me.
Q. Did you tell him about the considerations in the deed?
A. No, sir.
Q. You showed him the deeds, did you not?
A. He asked me for the deeds.
Q. Did you tell him the considerations in the deed were false?
432 A. I did not tell him anything about it; didn't say a word about it; he never made an inquiry what they cost, except as to whether or not I secured it by mortgage, and I said no.
Q. You told him you paid cash?

A. I didn't tell him anything of the kind; never told such a thing to any one.

Q. Didn't say anything about it; he never asked you the question?

A. He never asked me the question.

Q. Didn't you tell Lewis B. Shields he asked you that question?

A. I never told him, to my knowledge, such a thing.

Q. You swear positively you never told Mr. Shields so?

A. Mr. Shields is mistaken; I never said such a thing; if he says such a thing he says that which is not true.

Q. You swear positively you did not tell him?

A. I swear positively that I never told him that he asked me that question in his life. Mr. Knowlton never asked it, and if I had said such a thing it would be false. Lewis B. Shields won't say I said so if he tells the truth.

Q. Did you not tell Mr. Lewis B. Shields that Mr. Knowlton asked you what you paid for the property in Boston, and that you told him exactly what you paid.

A. No, sir; I never told him anything of the kind.

Q. Mr. Knowlton told you to make this trade?

A. He most assuredly done all the business.

Q. You didn't want to sell the property at all?

A. I was willing to sell the property at a fair valuation,
433 but I was so uncertain what he offered after I considered the matter thoroughly before writing my attorney, and never wrote until Knowlton had fully satisfied himself in regard to mine.

Q. Did he tell you how he satisfied himself?

A. He told me he fully satisfied himself.

Q. Ho told you so?

A. Yes, sir.

Q. When and where?

A. He told me on the 21st of August, the day prior to my going to the West Side, when he procured the letter of Heber.

Q. When he got Knight's letter?

A. He stated that put a new face upon the matter.

Q. He told you that?

A. Yes, sir.

Q. There was a new face on the matter after that?

A. He said what Knight had written was that the property would not bring over $100 a lot. I replied, That is exactly what I think it is taxed for. We talked the matter over, and I told him there was no harm done; I was in no hurry. He replied that he could keep the mortgage alive, and that would make it about equal. I said, No; there would be on my property, all told, but $1,000, and you would have $1,800 on yours. He called my attention that he had loaned me $500.

Q. You did not tell him about the fence at the Clarendon Hills?

A. I didn't know anything about it.

Q. Did not tell him anything about the distance it was—2,000 feet by Dale street?

A. No, sir; I never did.

Q. You showed him where Dale St. was?
434 A. I told him it run to the depot.
Q. Directly from the depot?
A. From the property to the depot.
Q. You told him that?
A. I certainly did. I never knew about the fence.
Q. You told him there was a direct street running from the property to the depot?
A. The word "direct" was not used at all.
Q. You showed him where Dale St. was?
A. Yes, sir.
Q. Tell him it run from the depot to the property?
A. From the depot to the property.
Q. There is a fence across there?
A. There was an opening in the fence.
Q. You cannot drive through with a carriage to the passenger platform?
A. Those that reside there get out at the other side.
Q. You did not tell him he had got to drive a mile and a half round?
A. I was not aware he would have to drive a mile and a half; never knew anything about that until his complaint was lodged in the superior court. I was never aware that anybody had to drive around to the depot. I had always driven there.
Q. You saw Bamford's affidavit that came from Boston, did you?
A. Yes, sir. I don't know — I did with much attention. I leave such matters to my attorney.
Q. Did you tell him that four of these lots were so high he could not build on them?
A. No, sir. I was not aware he could not build, nor am I now.
I have seen higher lots. There is no reason why I should
435 think anything of the kind.
Q. Didn't tell him anything about — the lots laid?
A. I could not describe the lots. I am not accustomed to describing lots.
Q. You have seen it 6 or 7 times?
A. I saw it probably as many as 6 or 7 times prior to coming to Chicago. Since I have been in Boston recently I have seen it five times. I went there with some gentleman, and walked there and back to test the time it took, and it took us seven minutes and three seconds to walk to it and five to walk back.
Q. On Dale St.?
A. Yes, sir. We timed it.
Q. On the 29th of June, when you met Knowlton, you owed Strauss $200, didn't you?
A. I owed him more than $200.
Q. How much of a mortgage was there on the furniture?
A. That had nothing to do with the mortgage on the furniture.
Q. How much was the mortgage?
A. I can't recall.
Q. $1,000?

A. It was more than that.
Q. $3,000?
A. There was $3,000.
Q. Was that paid?
A. I did not pay it.
Q. You never paid it?
A. No, sir. I sold the contents of the house.
Q. You assumed that mortgage, did you not?
A. I exchanged the contents of the house.
Q. When you met Mr. Knowlton you owed $800 in Boston?
A. Yes, sir.
Q. And $100 to Mr. Blaisdell?
A. I don't believe I owed him $100.
Q. You owed him a judgment?
A. Yes, sir.
436 Q. He was pressing you for the pay?
A. No, sir.
Q. You owed Strauss this $200?
A. I owed Strauss $200 and some more, but that has nothing to do with the furniture. It was money that he had advanced to me.
Q. You transferred to Mr. Knowlton these 27 lots, did you?
A. Yes, sir.
Q. And for the 27 lots you transferred to him at the time of this exchange he gave you up the diamonds, did he not?
A. He gave me the diamonds immediately after the contract was signed.
Q. He gave you the note you gave him?
A. Yes, sir. He did not give me the note until the deeds were made.
Q. You gave him the deeds of the Clarendon Hills property?
A. Yes, sir.
Q. So you got from him the three houses on Winthrop Place, your diamonds again, and you had all the money; you never paid any money back to him at all that you borrowed of him?
A. No, sir—inasmuch as that was in the consideration of the exchange—excepting the $175 paid thro' the court.
Q. You assumed the mortgage of $1,800 on the Winthrop Place property?
A. Yes, sir.
Q. Have you ever paid it?
A. I have not paid it. I have provided money to pay it now in the superior court or in this court.
Q. You did not pay it?
A. No, sir.
437 Q. You filed a suit in regard to it; you enjoined the trustees from making the sale?
A. Yes, sir.
Q. You state Mr. Knowlton asked you to write Mr. Bamford that this property cost you ten cts. a foot?
A. I did not state that he asked — to write to Bamford to say the property cost me ten cts. a foot, but that he asked me to write in

such a way as to lead Bamford to convey the impression and opinion that the property actually cost me that amount.

Q. Why was the amount of 10 cts. a foot mentioned?

A. The amount of 10 cts.? I do not recollect how it was mentioned, but if it was mentioned it was in regard to what it brought at auction.

Q. You told him it brought ten cts.?

A. I don't know what I told him; I have not been able to get hold of the letter.

Q. You told Knowlton it brought ten cts. in the past?

A. No, sir. I told him at auction it brought somewhere from six to twelve cts. a foot—portions of it. That was the information I had derived from what I thought very good authority.

Q. You have since learned that was false, have you?

A. No, sir; I have learned that my conception of the matter is correct, and that is strictly true.

Q. Do you know anybody that bought at ten cts.?

A. I know Mr. Rogers bought for ten cts.

Q. That is a lot on the corner?

A. It is a corner lot.

Q. Did he buy that at auction?

438 A. I do not know whether he bought it at auction or otherwise. I went and asked him if he paid ten cts. a foot, cash, and he said yes; and the property is worth more to-day than when he bought it.

Q. Do you know of one lot that was sold at auction at ten cts.?

Objected to unless limited to the property owned by Mrs. Hanbury.

A. No, sir; I do not; I never said I knew one lot.

Q. You placed your idea of the value of the lots on these auction sales, did you not?

A. No, sir; I did not; I placed no reliance whatever on the auction sales. I drew my conclusions in regard to that from the knowledge I derived at the time I purchased it, on making inquiries. The auction sales I know very little about, and only after I had purchased the same did I see a notice of the auction sale that had taken place prior to my purchasing it. Where it was claimed the property had b-ought six to twelve cts. a foot I was not present at the time, and all I understood about it is since then, and that which I have derived from my own experience.

Q. You gave Knowlton the benefit of all that knowledge?

A. No, sir; I did not give him the benefit of it, because I could not substantiate it. I desired him to enlighten himself, and if he failed to do so it was not because I did not request him to do it.

Q. You told him about the auction sales?

439 A. I don't know I told him anything particular; I know I did not anything more than being unimproved.

Q. You told him about the auction sale?

A. Yes, sir; I spoke to him about the auction sale; I told him about my attempt and failure, and the cause of it.

Q. At what interview did you tell him about your auction sale and the failure of the sale?

A. I can't recollect at what particular interview, only I spoke about the auction sale and the failure.

Q. Was not that at the time you wished him all the success in the world?

A. No, sir; we had no discussion in regard to the property then in any way, except that which pertained to the case of the signing of the papers.

Q. Didn't talk about the value of the property even?

A. No, sir; there was no value set on it on either side. I never knew what the property cost him.

Q. This Boston property?

A. I never knew what it cost him, and he never knew what it cost me.

Q. You didn't tell him anything about what it cost you?

A. No, sir; when he asked me if I could put a value upon it I told him I was not competent to do so.

Q. Did you tell him about the trade with Whiting?

A. No, sir.

Q. You showed him the deed?

A. At his request I did.

440 Q. You did not tell him anything about the consideration?

Objected to as before.

Q. You gave him Page's deed—you gave that to Knowlton?

A. He asked me for the papers I had in regard to it.

Q. Where are those deeds now?

A. I think they are in my attorney's possession.

Q. You refused to give them to him afterwards, didn't you?

A. I did not refuse to give him the deeds until after he brought suit, and then I refused to give him the deeds.

Q. When was the idea of mortgaging the property in Boston given up?

A. Not until the confirmation of the sale took place and the contract was signed, on the 8th of September, 1882.

Q. You know Mr. Heber?

A. I do not.

Q. Ever seen him?

A. I have never seen him.

Q. You know Mr. Knight?

A. You knew Mr. Knight many years ago. I have never seen him since, and I am not acquainted with him.

Q. You place much stress upon the letters you received from Mr. Cottrell; we would like to see them.

A. I placed confidence in my attorney in Boston and in what he advised me to do.

Q. We would like to see the letters.

A. If I have them you shall have them.

441 (Counsel for Mrs. Hanbury object to produce the letters inquired for; which objection is sustained by the master.)

Q. Have you stated everything that took place between you and Knowlton in the office of M. A. Rorke & Son on the 8th day of September?

A. I don't know that I have stated everything; what the promptings have reminded me of I have stated.

Q. Anything said about the $1,800 on the 8th of September?

A. I am not certain that there was.

Q. You are certain that there was when the deeds were signed?

A. On the day the deeds were signed, before it was signed.

Q. He told you the interest was all paid up to Oct. 1st?

A. He told Mr. Rorke the interest was paid to Oct. 1st. He said there was no underhanded work; that it was just as he said.

Q. Did you tell him who owned the mortgage?

A. No, sir; he said he controlled it, and I would have to pay the interest to him.

Q. He didn't tell you he owned it?

A. He said he controlled it.

Q. Didn't tell you he owned it?

A. No, sir; he told me, all the way through, he controlled it, and could extend it at his own pleasure, and I was to pay the interest to him.

Q. He told you that?

A. Yes, sir.

Q. Never told you anything about it that day?

A. He told me on the 24th, and told me on the 10th of
442 August the mortgage was due in June, and the property was free and clear, and on the 24th he said he could keep that alive and we will make an equal exchange, or words to that effect; to which I said nought.

Q. He never told you he owned the mortgage?

—. I don't remember he ever told me he owned the mortgage. I don't remember he ever told me he owned the mortgage; he said he controlled it.

Q. Didn't say he was the owner?

A. I don't remember he did; he says I control it.

Q. What did he say about the interest?

A. He said the interest was paid prior to October 1st, and on the 28th; he then said it was paid to Oct. 1st, and my first interest would be the 1st day of April, 1883.

Q. He did not say anything about that when he drew the agreement?

A. No, sir; I don't recall anything more than what I have stated, to a certainty.

Q. You never paid that mortgage?

Objected to.

A. No, sir; I have not paid it, but it has been provided for.

Q. You borrowed money of Mr. Rorke to pay it?

A. Mr. Rorke secured money for me. I don't know of whom he secured it. I don't know the name.

Q. He paid the money all over to you?

A. I counted every dollar of the money.

Q. He paid it all over into your hands?

A. Yes, sir; every dollar went into my hands until I returned it to him to put it away.

Q. So it is your money that *it* is on deposit in the court?

443 A. It is the money that was raised on the property, to the best of my knowledge.

Q. He paid it all over to you?

A. Yes, sir; the money was paid over to me.

Q. How much did he pay over to you?

A. He paid me $3,200.

Q. Exactly?

A. I think so.

Q. How much have you paid him back of that $3,200?

Objected to.

A. I did, all but a very small amount of the money. I also deposited $2,194 of it in court, and I also had some bills to pay, and there was but little for Mr. Rorke; that was voluntary on my part. I received the money and returned it to Mr. Rorke and deposited it in court.

Q. Yourself in court?

A. No, sir; I gave it to Mr. Rorke.

Q. Which Mr. Rorke?

A. Mr. M. A. Rorke.

Q. If Mr. Knowlton was fully informed in regard to the value of the property, why did you say to him, You know I told you before now you could not sell the Clarendon Hills property at present?

A. Because I desired to influence him not to make any effort to sell and carry out my own intentions in regard to it, as I should not have sold the whole of it—only sufficient to raise what I wanted—as I believed the future would be better for that property. I was conscientious in so stating, as though it was my own doings.

Q. Why did you say, "You know I told you before;" why

444 did you say that if he was well informed; why did you tell him your ideas?

A. Because I did not want him to expect to realize an enormous price for it.

Q. What made you think he expected to realize an enormous price on it?

A. On the last day of signing the deed, and prior to that, when I saw him before a few days, he conveyed the impression to me, without saying so, that he would sell the property immediately, and I advised him not to.

Q. Why did you advise him not to sell it?

A. Because I did not think it would bring a reasonable price, as I had stated.

Q. You wanted to have him satisfied with the trade?

A. I wanted him to be perfectly satisfied in every sense of the word.

Q. You were satisfied?

A. When you ask that question—at the time I made the trade I was satisfied; I believed all he had told me.

Q. Are you satisfied now?

A. I have to make the most of it. The property in this case has been a secondary consideration. The question of fraud is what I have disputed from beginning to end. Every word he has stated to me in regard to it I found to be false, and every one in the neighborhood—I have done nothing but make the place habitable since, and the bills will show.

Q. What bills?

A. Bills for plumbing, painting—veneering it over to cover the botch it is. I have made the most of it. I have utilized
445 the money for the benefit of the property, and very little for my own welfare; it is there; any one can see it, and it is inhabited by people different from what had been there; the property is well rented, and they are clean—something I did not find there. There is one thing that has not been removed, and that is the water underneath the house.

Q. Who was present when Knowlton asked you to write this letter to Bamford?

A. I had written the letter to Bamford voluntarily, until he asked me to rewrite it; my little boy was present—Willie.

Q. Where is that boy?

A. He is at school—at college.

Q. Not in town?

A. No, sir; he is in Western Kansas, at St. Mary's College.

Q. Do you know what that letter contained, exactly how you wrote it?

A. No, sir; I do not. I could not state as to a sentence therein contained.

Q. Why were you so particularly anxious about this letter?

A. In what respect?

Q. As to make affidavits in regard to it and testify in regard to it, when it was not introduced on the part of the complainant in the suit.

A. Because I wished to give the facts in detail from beginning to end and did not care to omit either side. I have nothing to conceal now.

Q. You carried the impression to Mr. Bamford in that letter, did you not, that you had paid ten cts. a foot?

446 A. No, sir; I know I didn't carry anything of the kind. I might have put in the letter in relation to what it brought at auction, but never that it cost me ten cts. a foot. I used no such word.

Q. On the 29th of June you say you met Mr. Knowlton for the first time?

A. I didn't say anything of the kind. I say I met him on the 28th for the first time.

Q. How do you know it was on the 28th?

A. Because I recall the circumstance fully and completely; it is indelibly impressed on my memory.

Q. Are you positive it was on the 29th?
A. I am positive. I met him on the 28th and he lent me money on the 29th of June, 1882.
Q. When next did you meet him?
A. I think, as near as I can remember, I met him on the 29th of July.
Q. Only a months later?
—. ——.
Q. He never called on you from that time?
A. No, sir.
Q. Never heard anything from him?
A. Not that I remember. I don't recollect that he called or I heard of him or saw him.
Q. What was the conversation between you on the 29th of July?
A. The conversation was in regard to the obligation which was due him as interest.

Objected to as having been gone over before.

Q. What was the subject of the conversation?
A. It was in regard to the obligation due him. I think it was $12, for one month's interest.
Q. You paid him interest at that time?
447 A. No, sir; I told him I was not prepared to pay it.
Q. That was on the 29th of July?
A. To the best of my knowledge I said on or about the 29th.
Q. Where did you meet him on that day?
A. He called at my house, 281 Michigan Ave.
Q. Did you ask him to call?
A. No, sir; I don't remember that I did. I may have asked him to call for the interest, but I don't remember.
Q. You told him at that time, did you not, you owed Mr. Strauss?
A. No. I told him at that time that I was not prepared to pay him. I had nothing to say about Strauss that *that* I remember. The occasion of my speaking to him about Strauss was when I borrowed money.
Q. You did not owe Strauss anything on the 29th?
A. Only for the furniture.
Q. How about the rent of the house; wasn't that due?
A. I didn't pay that to Strauss. My rent was always paid promptly.
Q. You borrowed $100 on that occasion from him?
A. I don't think I got money on the 29th of July; I think I got it in August.
Q. After you told him about the Boston property?
A. It must have been, for I didn't see him until the 9th.
Q. What security did you give him?
A. Nothing; he took my note.
Q. It was after he learned you had this valuable property?
448 A. I think it was.
Q. You told him all about the Boston property before you got the one hundred dollars?

A. I don't know. I told him all about it. When he called I stated I was preparing my little girls for a boarding-school and needed extra money, and asked for an extra hundred dollars. That was the last of July. He said he would consider the matter. I told him my reasons for using the money.

Q. How did you propose to pay him this $100?

A. I told him I would either sell my house or the equity in the house or go East and raise the money. I told him exactly how I proposed to do it.

Q. Did you sell the house?

A. I sold it in September.

Q. Who did you sell the house to?

A. The house was sold to Mrs. Martin.

Q. You had some trouble with her about the matter?

A. No, sir; I never had any trouble with her in my life in any way, shape, or manner. I never transacted the exchange with her.

Q. Didn't she find some fault with the trade?

A. Never to me; never said a word to me about it; never found any fault to me.

Q. You made an exchange for another house farther down on the avenue?

A. I made an exchange of the equity in 281 for a supposed $1,300 worth at 1328 Michigan Ave.

Q. Ever have any conversation with Mrs. Martin after this interview between Knowlton and yourself at your house by appointment, when you introduced Mr. Knowlton?

449 A. No, sir; the fact was Mrs. Martin was impatient to go home and attend to dinner, and she left me after he came, to the best of my knowledge.

Q. You told her you had an old friend in the city that would loan her money, referring to Knowlton?

A. No, sir; I told her a gentleman that I knew who had loaned me money at 3 per cent. and recently at 2½, and would extend the same kindness to her.

Q. How happened you to tell her that?

A. Because I knew she wanted money.

Q. How did you know Mr. Knowlton would loan it to her?

A. I knew from his own statement that he was in that business.

Q. You state that Mr. Knowlton has always appeared in this case on every occasion. Was he in Boston on the 8th day of August, when testimony was taken there?

A. I did not say he was there on the 8th of August. I said from the time he got there, on the 5th of September.

Q. Did Knowlton appear in Boston at all on the 8th day of August?

A. I didn't see him. I expected to find Mr. Hill there, and was much surprised to find Mr. Knowlton to take his place.

Q. You were agreeably surprised, you mean to say?

A. I don't know I am agreeably surprised to meet Mr. Knowlton at any time. I had no desire to see him or any desire he should be in my presence.

450 Q. Did you ever see Knowlton instruct me as to the conduct of the case?

A. I have seen him in the court and seen him make remarks to you and you to him. I have seen that done.

Q. You don't know what he said?

A. No, sir; my hearing is very poor; he speaks very low.

Q. You don't know what he did say?

A. No, sir; I do not.

Q. On the 29th of July you had a second interview with Knowlton. Was that the second or third?

Objected to as having been gone over before.

A. I did not say it was on the 29th, but on or about the 29th of July, 1882; that was the third time I saw him, I think.

Q. Where was the second time you saw him?

A. It was the fourth time I saw him—the 29th of July.

Q. When was the first time you saw him?

A. June 28th; I met him the second time the morning of the 29th; the third time, later in the day on the 29th, at the office of Shields. On the morning of the 29th I saw him at the office of Strauss, on the West Side, and he claimed he was going to the bank, and then came to the office of Shields, where I saw him for the third time.

Q. When next did you see him?

A. I saw him on or about the 29th of July—a month later.

Q. Next after on the 29th of July?

A. I could not exactly say whether he called between that and the 9th of August.

Q. Why do you fix upon the 9th?

451 —. I am certain as to the 9th; whether I saw him between the 29th and 9th I cannot tell.

Q. How did you fix it on the 9th?

A. Because on that date I wrote a letter to Boston for the abstract.

Q. Who did you write to?

A. To Mr. Cottrell, my attorney.

Q. Ever write to Bamford, in Boston, about the matter?

A. Never wrote him anything about it.

Q. Never wrote a letter of introduction?

A. I wrote a letter of introduction.

Q. Mr. Knowlton asked you to write that letter to Mr. Bamford?

A. The second copy of it he did; one I had written was destroyed.

Q. He offered in the first place to write it?

A. I did it through courtesy, that he could pay off any obligation due on the property.

Q. He called to get the letter which you wrote?

A. I don't think he called particularly for the letter, as he had been in the house almost daily, and was there in regard to the furniture. I don't remember he called especially in regard to that letter.

Q. On the 9th—was that the time you spoke about mortgaging the premises?

A. Yes, sir; I think I spoke of mortgaging or selling a portion of it.

Q. He wanted his money at that time; that is what he called for?

A. No, sir; his money would not be due for 20 days or about a month.

Q. The interest was due?

452 A. The interest was due; it was understood if I was not able to pay it it would be paid at the end of two months.

Q. What day did you give him the deeds?

A. The afternoon of the 10th of August.

Q. That was the 6th interview?

A. To the best of knowledge, it was the 6th, covering the time from the 29th of July to the 9th of August; to the best of my knowledge it was the 6th.

Q. When did you give him the plat of the land?

A. About Aug. 15th.

Q. Did you give him the deed?

A. No; I gave him the plan. I sent for the plan on the 9th with the abstract?

Q. When did it get here?

A. About the 15th. I gave it to him when I received it?

Q. Did you go to his office to give it to him?

A. No, sir; I never sought his presence; he always sought mine.

Q. Why did he seek your presence?

A. To induce me to make the trade; that seemed to be his desire.

Q. What made him so anxious to make the trade?

A. I can't tell you anything about it.

Q. When did he first manifest this tremendous desire to buy the property?

A. Immediately.

Q. After you described to him about the property he wanted it, did he?

A. I don't know. I had given him a complete description.

Q. You had shown him the deeds?

A. I had given the deeds.

453 Q. Did he want to buy it?

A. He asked me how I would like to trade for Chicago property.

Q. When did he first ask you that question?

A. On the 9th of August, I am positive.

Q. That was after you had the conversation about it, was it; you told him you had the property before he wanted to buy?

A. I told him of my intention to raise a mortgage or sell some of the property, when he asked me how I would like to exchange it for Chicago improved property.

Q. When did you first learn he had got these letters from Boston?

A. I first learned from him on the afternoon of the 21st.

Objected to as having been gone over at least once before, and probably twice.

A. I learned of his receiving the letter of Heber on the 21st of August, in the afternoon. I learned of his receiving the letter from Knight on the 24th of August, which was the following Thursday, I believe.

Q. You saw and read those letters?

A. He didn't give me the first letter to read. He read extracts from it to me. I could not say, as to the later letter, whether he gave it into my hands to read or not. I only knew that he read the contents in full.

Q. Where did this map or plan of the lots come from?

A. Mr. Cottrell, in Boston.

Q. Do you know where Mr. Cottrell got it?

454 A. No, sir; I do not. I told him, when I wrote him for it, unless he had it it must be at the office of Mr. Bamford. He sent the plan. I don't remember whether he got it or had it in his own office.

Q. It is substantially the same plan we had in Boston, reduced in size?

A. I never saw the plan introduced in this case.

Q. Mr. Knowlton introduced it?

A. I don't remember the circumstance.

Q. That little plan we had in Boston is substantially the same plan, is it not, of the lots?

A. I do not know. I have not compared them.

Q. Do you know where the lots are without the plan—where they were located?

A. I could only tell they are on Charles, James, Poplar, and Beach Sts. I could not designate the lots without having the plan to go by.

Q. Do you know Mr. Charles J. Page, of Boston?

A. Yes, sir.

Q. Did you see him the last time you were in Boston?

A. I did.

Q. Did you call him as a witness in this case—ask him to come and testify as a witness in your case?

A. No, sir; I did not ask him to testify. I considered whether it was best to call him to testify, inasmuch as I knew he had acted for Knowlton in the past. I called his brother. I called on Mr. Page. The matter I discussed with him was in regard to the mortgage and who paid it. He told me Knowlton sent the money to pay the mortgage.

Q. He told you Knowlton sent the money?

A. Yes, sir.

455 Q. He told you that?

A. Yes, sir.

Q. When and where did he tell you that?

A. He told me in his office, in Boston.

Q. Didn't he tell you it was sent from Stamford, Connecticut?

A. No, sir; he said the money came from Chicago. I am positive as to that.

Q. Are you as positive about that as of anything else you have testified to?

A. There are many things more recent I might recall more readily.

Q. Do you know Henry Grew?

A. Yes, sir; I think I have met the gentleman; there is a Mr. Grew I have met. I cannot tell whether it is Henry or not.

Q. Did you meet him the last time you were in Boston?

A. No, sir; I met him in Hyde Park, just west of Boston.

Q. Have any conversation with him as to being a witness in the case?

A. Yes, sir; conversation in regard to the property. He told me parties endeavored to depreciate the value of the property. I learned immediately that he resisted all improvements and the encroachment of the city; that he condemned anything that pertained to improvements, as he objected to taxation, so I did not call him, and Mr. Moses also.

Q. How do you know Mr. Moses resists all improvements?

A. I only learned from a majority of people of there that such is the case—that is the prevailing opinion.

456 Q. Do you know of your own knowledge?

A. I have never talked to Mr. Moses.

Q. Mr. Grew didn't tell you anything of that kind?

A. No, sir; he didn't want the city encroachment.

Q. He told you he did not place the value any higher than Moses did, did he?

Objected to.

A. No, sir; he didn't tell me what the value was, and I am perfectly well aware that the lot adjoining his property, which belonged to Mr. Hastings, that Mr. Hastings refused to sell for less than ten cts. Mr. Bodlick is perfectly willing to pay six cts. cash—that adjoins a part of Mr. Grew's property.

Q. You did not call Mr. Grew as a witness?

A. He is an aged gentleman, and I had plenty of witnesses without calling him.

Q. Was Mr. Knowlton a frequent visitor at your house from the 9th of August to the 1st of September?

Objected to on the ground it has been gone over before.

A. Yes, sir; he was.

Q. When were these interviews—in the morning or evening?

A. They were almost always in the afternoon, but on one or two occasions he called in the evening, and he called one morning.

Q. The morning call was on the 8th of September?

—. ——.

Q. The subject-matter of all these interviews was business entirely, wasn't it?

A. I believe so.

Q. I ask the question because there was an intimation
457 on the part of your counsel in the cross-examination of Mr. Knowlton that it was otherwise.

A. I think you must be mistaken.

Q. When did you first learn there was a fence across Dale St.?

A. I believe I learned it for the first time since this suit was instituted.

Q. About what time did you first learn it?

A. I cannot recollect the date.

Adjourned to 11 a. m., October 24th.

OCT. 24TH, 1883.

Parties met pursuant to adjournment, and the cross-examination of Mrs. HANBURY was resumed as follows:

Q. At the adjournment last evening I asked you to produce letters received by you, concerning which you testified from, from Mr. Cottrell, of Boston, during your negotiation with Mr. Knowlton. Will you now produce them?

A. I have not got them.

Q. Where are they?

A. I don't know where they are at present. When I last saw them they were at my attorney's office.

Q. Do you decline to produce them?

A. I decline to produce them.

Q. How long has Mr. Cottrell been your attorney?

A. He has been my attorney in Boston since 1874.

Q. When you purchased what you call the Clarendon Hills property was Mr. Cottrell your adviser concerning the transaction between you and Mr. Whiting?

458 A. He was.

Q. Did he advise you to make that trade?

(Objected to.)

A. I don't recollect whether he did or not. He was simply my adviser as an attorney at the time.

Q. Did he, at your request, at that time examine the property?

A. He did.

Q. Did you and he together examine it?

A. I do not think we did.

Q. Did you see the property before making the purchase or exchange?

—. ——.

Q. Please detail all the circumstances connected with that exchange of property and what you got for the property.

(Objected to.)

A. I went to see the property. I cannot recall the date I first went to see it. I went in company with a young lady friend, Mr. Gates, and Mr. Whiting. I went again in the company of a lady friend and a relative. I went again in the company of a physician,

his wife, and child. On those three occasions only did I see the property before making the exchange. Mr. Cottrell was my legal adviser at the time. Mr. Whiting — concerned in making the exchange with myself. Mr. Albert Gates was the agent of the property I exchanged for this property, meaning the Clarendon Hills property, which property was my residence in Cambridge, with the furniture and all improvements that I had made on the
459 same since the date of purchase. The house consists of two stories. There were four rooms on the top floor; mansard roof; six rooms on the second floor, including the bath-room; hot and cold water, and all the improvements that are generally in a modern house. On the first floor there was two parlors, pantry, and dining-room, kitchen, &c.; down-stairs a place for coal and a wash-room. I put on the property all the improvements that are to be seen externally. There was nothing outside of the house at the time that I purchased it that was complete. I put concrete walks, marble steps—the lower one. I had several hundred loads of loam put in there. I had sod, at 3 cents per foot. I arranged flower beds. I had trees planted and shrubbery and had flower beds and grape vines planted, and the curb-stones adjusted and full-sized trees put along the sidewalk; also had the sewers attended to and the sewer receptacles cleaned, and the cellars cemented, so as to make it proof against anything detrimental to health. This property I exchanged for the Clarendon Hills property. The furniture cost me, including the piano and interior decorations and improvements, $5,800. The outside cost me between $3,500 and $3,500 over and above what I paid for the house. I paid $11,000 for the house, I believe, and there was a $6,000 mortgage.

Q. Was there any house there when you bought it?

A. There was the house I spoke of there, but not complete, as I have detailed it.

Q. You finished the house?

460 A. I finished it in a manner suited to my taste.

Q. Was there any mortgage on the furniture?

A. No, sir.

Q. Was the furniture new or second-hand?

A. The furniture was entirely new except three pieces.

Q. Of what did this furniture consist?

A. It consisted of carpets, black walnut furniture, and was all, right through, what was then called first-class furniture. The draperies were very nice and considered of the best. I had lambrequins made for the house and cornices for the same. I had the curtains for the house imported.

Q. Mr. Whiting had all this furniture, did he?

A. He received all the furniture, or rather all the contents of the house, with the exception of the bronzes, which are not included in the amount I have stated, and some curtains that I took from that and the three pieces of furniture—tete —, ladies' chair, and gentleman's chair.

Q. How much in value in furniture did Whiting get in the trade?

A. He got all I put in there excepting those pieces. There was no special value placed on them at the time of the exchange. It was a matter of exchange without any consideration, the equity being allowed to be $13,964, the amount of the exchange being $20,000, he assuming a mortgage of $6,000.

Q. Have you the deed from Whiting to you?

A. I have not.

Q. Do you know where it is?

A. I believe it is in my attorney's office, although I am not positive.

461 Q. I will ask you to produce the deed.

(Counsel for Mrs. Hanbury produce the deed.)

A. I also gave in the exchange the children's family carriage.

Q. What kind of a carriage was it—the value of it?

A. It was a first-class carry-all, I believe they call it; had two seats; I don't know the value.

Q. At the time you purchased the property you kept the carriage?

A. I had always had a carriage for years before. I did not have that carriage at that time?

Q. You had a carriage at that time?

A. Yes, sir; I had a phaeton carriage.

Q. You rode down to see the property frequently.

A. I don't know what property you refer to.

Q. What you call the Clarendon Hills property.

A. I did not. I only rode there on the occasions I told you prior to the purchase. After that I rode there unfrequently. In all I don't think I rode there a half a dozen times before I saw it recently.

Q. Please examine the document now shown you and state what it is.

A. Without reading in detail I am satisfied this is the deed.

Q. What deed?

A. The deed from Henry Whiting to myself.

Q. This is the original deed that you received from Mr. Whiting?

A. That is the original deed, to the best of my knowledge.

By Mr. HILL: This deed is described as follows: Dated July
462 24th, 1876, signed by Harvey A. Whiting, Geo. O. Whiting, Mary E. Whiting, Laura B. Whiting, with the respective seals, acknowledged before A. Gates, Jr., justice of the peace, county of Suffolk, June 29th, 1876, recorded in the register's office of Suffolk, Liber 1337, folio 223—grantors, Harvey A. Whiting and Geo. O. Whiting; grantee, Anna Hanbury—conveying the property therein described; consideration, $19,962.27; offered in evidence by complainant, Exhibit Hanbury, "A," and returned to counsel with the understanding that it is to be produced at the hearing.

Q. Have you the deed referred to in this deed from Page to Whiting? And, if so, please produce it.

A. have got the deed.

(Deed produced.)

Mr. HILL: Deed from Charles J. Page and James H. Page, in consideration of $21,000, to Harvey A. Whiting and Geo. O. Whiting, dated May 5th, 1872, signed by Charles J. Page, Kate C. Page, James H. Page, and Sarah W. Page, acknowledged May 29th, 1873, before James Daily, justice of the peace, recorded at Dedham, Mass., June 1873, Norfolk, Deed Liber 140, folio 268, offered in evidence and marked Hanbury, "B," and returned to counsel with the understanding that it is to be produced at the hearing.

Q. These two were the deeds which you gave Mr. Knowlton on the 29th of June, 1882?

A. They are not. I did not give him the deeds on that day at all.

Q. When did you give them to him?

A. On the 10th of August, in the afternoon.

463 Q. How did you and Mr. Whiting arrive at the consideration named in the deed between you and himself?

A. We arrived at a consideration after about two weeks' consideration; he stating to me that his property had cost him $21,000. My property was appraised by himself and Mr. Gates, and I believe Mr. Rugg, of Cambridge, and was considered worth $19,960, more or less. His property being worth more than mine, there was one lot he retained in the exchange so as to make it equal. The exchange for my property was made with the understanding that he should assume the $6,000 mortgage. The equity against his property in exchange was, as I have stated, to the best of my knowledge, $13,964.

Q. Then, as I understand, for the 27 lots, which you subsequently sold Mr. Knowlton, you made this exchange of the property at Cambridge, real and personal?

A. Yes, sir.

Q. All you received from Mr. Whiting for your Cambridge property, real and personal, before *the* described by you, then, were these 27 unimproved lots?

A. I think that was all. I can't recollect anything else that I did receive for it.

Q. You took pains at that time, did you not, to inform yourself of the value and of the situation of these lots?

A. I took pains, as I have before stated, by going there on three occasions to see it and by consulting with those acquainted

464 with the value of the lots and surroundings and with those who had paid a higher price than I paid for my property.

Q. You mean than you were to pay for your property?

A. I don't mean a higher price than I ought to pay. I mean a higher price than I did pay.

Question repeated.

A. They paid more for what they purchased than I paid for mine. I used that as a criterion, to a certain extent.

Q. You mean to say you used the price Mr. Whiting paid for the property as a criterion for what you were about to pay for it when you made the negotiation?

A. When you say Mr. Whiting—he was one of the number whose statements I used as a criterion to go by.

Q. You state what Mr. Whiting paid was something of a criterion by which you went in purchasing the lots?

A. Only partially it was something of a criterion, but only partial.

Q. How did you know at that time what Mr. Whiting had paid for the lots?

A. I did not know what he had paid except what he told me. I have never known since what he did pay except that,

Q. You received that knowledge and acted upon it, did you not?

A. I did not act upon that knowledge wholly. I received knowledge from Whiting and Gates and from my attorney. I acted upon that knowledge with information that I had derived from others at the same time.

465 Q. What other parties do you refer to? Give their names and residences.

A. I refer to parties who acted for the parties who had purchased the property at Clarendon Hills—two agents whose names I cannot now recall. They had paid 10 cents a foot for property not more than 1,200 feet from mine. They had built substantial houses on the same, and I believe to-day reside there.

Q. Mention the name of one individual residing within 1,200 feet of this property who, of your own knowledge, had paid at that time any sum of money, and, if so, what sum, for the lot on which he or she resides.

A. Mr. Eldridge—I think his name is Daniel Eldridge—told me himself that he paid 10 cents a foot for his property, I believe, 9 years ago. He also informed me that in the past two years he had sold some for 11 cents a foot cash.

Q. Did he tell this at the time or before you made the negotiation with Whiting?

A. He did not.

Q. What information had you at that time in regard to sales or purchases of property near this upon which you placed reliance in forming a value of the lots, which, if it did so, induced you to make the exchange with Mr. Whiting?

A. I had information from Mr. Hitchborn, of Boston, whose integrity cannot be disputed, and he told me what it had brought at auction.

Q. What property did he refer to?

A. He referred to the special plot wherein my lots are included.

466 Q. And to auction sales made before that time by the Pages or others?

A. He referred to the special auction sale made by the Pages. I think the auction sale took place in '73 or '74. He also informed me that he was fully satisfied that parties in the immediate neighborhood had purchased property at 10 cents a foot cash. I know him to be a truthful gentleman, and have the most implicit confidence in any utterance that he may express.

Q. Is this Mr. Hitchborn the same gentleman who recently testified in this case in Boston on your behalf?

A. The gentleman that informed me then was the witness' father—the father of the witness that testified on the recent occasion.

Q. Where is the father now?

A. The father, I believe, is in Boston.

Q. Can you give his first name and residence?

A. I cannot give his residence or first name.

Q. Upon his statements, then, you mainly relied in making the exchange with Mr. Whiting?

A. Upon his statement and the statements of the others mentioned I have made the exchange with Whiting; not on any one of them, but upon the statements of all of them combined.

Q. Did you ever take any steps to ascertain whether those statements as to the alleged auction sales were true or false?

A. I saw the paper. I could not state what paper it was; it was a newspaper where the statement of the auction sale was
467 printed; it confirmed all that he had stated to me.

Q. Did you ever ask or consult with Mr. Page, commonly called Charlie Page or Charles J. Page, with reference to these alleged sales?

A. I have never known him to consult with until the present year, and then I never consulted him.

Q. Of your own knowledge, then, you don't know that Mr. Page ever made an auction sale of any lots in what is called the Page tract, in which your property is situated?

A. I have no knowledge of any such sale, except that derived from Mr. Charles J. Page. He told me there were lots sold there from 6 to 12 cents a foot. He told me further that members of his family owned property at the present time, and that they will not sell them less than 6 cents a foot.

Q. Did you ever drive from any of these lots to the station at Clarendon Hills, on the Boston and Providence road?

A. I have driven from the lots to the station on the Providence road, to the station of Clarendon Hills, some time since the 1st of last August, but never before.

Q. Then you never before making the exchange made any examination of the location of these lots with reference to the railway station at Clarendon Hills, on the Boston and Providence road?

A. Yes, sir; I did.

Q. When and where?

468 A. I drove on Poplar street to the corner of Metropolitan and Poplar, and I could see the railroad very plainly from that point, and drew my conclusion that it was but a short distance.

Q. Did you at that time or not know there was no crossing on Metropolitan avenue over the Boston & Providence railway at Clarendon Hills or near Clarendon Hills, and the only crossing was at Canterbury street?

A. I did not know that there was a board fence across there at the railroad tracks. I never knew there was such a fence until quite recently—since the commencement of this suit by Knowlton.

Q. When did you first learn of the existence of the fence you mention?

A. I learned that by writing, if such is the case.

Q. To whom did you write?

A. I can't recall; I believe I wrote to relatives.

Q. Give his name and residence.

A. J. W. Regan, engineer of the fire department, city of Boston; headquarters engine-house, Mason street.

Q. Did you receive a reply from him?

A. I believe I wrote him; I did not say I was positive.

Q. Did you receive a reply from him?

A. I received a reply to the letter I wrote stating that such a fence existed, but there were three openings, and all drove through to the depot came out to the other side and walked through—that is, all who drove through from the Clarendon Hills side.

469 Q. After purchasing this property which—as I understand you, the 27 lots were free from all encumbrance as you received them from Mr. Whiting. You mortgaged them to Mrs. Chevor for $800; who negotiated with Mrs. Chevor for this loan?

A. I really don't recollect; it might have been Mr. Gates. I think it was.

Q. Did you have no personal interview with Mrs. Chevor in regard to the lots?

A. I have never seen Mrs. Chevor.

Q. How long after the obtaining of this $800 was this mortgage transferred to Mrs. Fales or to Rev. Dr. Fales, as you stated in your direct examination?

A. I have no record and cannot recollect.

Q. As near as you can remember.

A. I do not remember sufficiently well to give any answer.

Q. Who made the negotiation with the Fales?

A. A. J. Bamford.

Q. You employed him, then, as your agent in that transaction?

A. I did not employ him. He came to me, understanding I required $800, and said he had a party who would loan it, he acting for both parties.

Q. How did he know you wanted to dispose of the mortgage?

A. I did not know his business or his source of information and do not know it now.

Q. Has Mr. Bamford acted as your agent concerning the 27 lots which you received from Mr. Whiting?

470 A. Only in the sense of attending to the grass and the sale thereof and the paying of the interest on the mortgage.

Q. What steps, if any, did he take concerning the grass and the sale thereof and the payment of the interest on the mortgage?

A. I don't know what steps he took to sell the grass, but I do know and believe he paid the interest on the mortgage whenever I sent it to him.

Q. When did you begin to send money to Bamford to pay interest on the mortgage?

A. The first instalment of interest was due after my coming to Chicago.

Q. You then placed this property in his hands for sale, did you not?

A. I did not place this property in his hands for sale definite, and I told him if he had a good opportunity to sell it to inform me and I would give him my ideas in regard to it.

Q. Did you not tell Mr. Knowlton that Mr. Bamford was your Boston agent, who had charge of and was looking after these 27 lots in your behalf?

A. I might have told him that he was attending to the grass, and in that sense alone had charge of it. If I used the words had charge of it it was only in that sense—paying interest. I never left my property with anybody to sell. I did not desire to sell it and would never have sold it if I had not separated from my husband.

Q. When did you separate from your husband?

A. December 29th, 1877.

Q. Before or after you purchased these lots?

A. The year after I purchased these lots.

471 Q. Had the purchase of these lots anything to do with bringing about that separation?

A. It had nothing to do with bringing about the separation.

Q. The husband that you refer to was not your first husband, was he?

A. He was not.

Q. What was the name of your first husband and where did he reside?

A. My first husband's name was Barren. He resided some time in New York, some time at Saratoga, some time at Sharon Springs, some time at the West Indies, Matamoras, and sometimes he was abroad.

Q. At all these times you resided with him, did you not?

A. Not at all these time-. I resided with him at Saratoga. I went abroad with him. I resided with him a short time in New York. I resided with him at Sharon Springs, and I was with him constantly and unceasingly from the day of our marriage until the time of his death; never absent one meal.

Q. When and where did he die?

A. He died in New York.

Q. Did he die leaving a will or intestate?

A. He died leaving me his whole property by will.

Q. Of what did that property mainly consist—real and personal? Briefly describe it.

A. It consisted of real estate to the extent of about $32,000. It consisted of bonds and money of about $70,000. I believe he left $1,000 each to his brothers and sisters.

472 Q. I understand you he left this to you by will?

A. He left it to me by will, I believe.

Q. Where?

A. In New York, where he died.

Q. New York city?

A. Yes, sir.
Q. Was the will probated in New York city?
A. Yes, sir; it was; before Surrogate Tucker.
Q. When?
A. The moneys were not included in the will, only the estate.
Q. About when?
A. His death occurred September, 1867; it was the last of September or first of October.
Q. What was his full name?
A. Francis M. Baron.
Q. At the time of his death you and he resided together in the city of New York? State the street and number.
A. 49th street. I don't remember the number. It is between Broadway and 8th Ave. I believe it was No. 141; I am not certain. I can refer to some papers and state the exact number.
Q. What was his business in New York?
A. He did no business; he lived on his income.
Q. How long after his death did you reside in New York?
A. Not very long; about a year; until I was again married, a few months after.
Q. Who did you then marry?
A. I married J. D. Hanbury.
Q. Where did he then reside?
A. He resided in New York city.
Q. How long did you and Hanbury reside together in New York city?
473 A. We didn't reside there for any length of time, as he went travelling; I can't recollect the exact date we left New York city.
Q. Where did you go from New York city?
A. We went to Niagara Falls and Buffalo, Louisville, New Orleans, Memphis, St. Louis, Chicago, Baltimore, Washington, Richmond, and principally through the South during the winter.
Q. What year was this?
A. The year after our marriage.
Q. 1872 or '3?
A. It was not in 1872 or '3; it was in the winter of 1867 and '8, I believe.
Q. How long were you travelling in this manner?
A. I traveled with my husband, when my health permitted, for the major portion of seven years, and again after a residence in Cambridge, excepting during the winters we spent South. I travelled with him the last year at intervals when I could be spared from my young children, who were then commencing to attend school.
Q. What was Mr. Hanbury's business?
A. He was interested in a shoulder-brace factory.
Q. Where does he now reside?
A. I am not acquainted with his present whereabouts; I have not heard from him for over two years.
Q. When you last heard from him where did he reside?

A. He was then in Toledo, Ohio, on his way to New York; after having an interview with him at 281 Michigan Ave. in re-
474 gard to our children; the date was the 23d of August, 1881.

Q. What was his full name?

A. John D. Hanbury.

Q. What was his post-office address?

A. I do not know.

Q. This money that you received from your first husband, was a portion paid of it paid for the Cambridge property which you exchanged with Mr. Whiting?

A. It was not.

Q. From what source did you receive the money which you paid for your Cambridge property?

A. I received it from my husband, J. T. Hanbury; he derived it from their profits on the proceeds of his endeavors in business.

Q. What became of the estate which you received from your former husband?

A. It was, unfortunately, squandered in a manner which I decline to answer.

Q. By whom?

A. By my husband.

Q. Then, you now claim which you purchased of Mr. Whiting cost you upwards of $13,000?

A. I claim it cost me $13,900 and some odd dollars, in the same proportion to the number of feet included in the 27 lots.

Q. You informed Mr. Knowlton of these facts, did you not, when you made the trade with him?

A. I don't know what facts you refer to.

Q. These facts in regard to what you paid for the property to Mr. Whiting.

A. I never said to Mr. Knowlton what I paid for my property by word, act, or insinuation.

475 Q. You showed him the deed you received from Mr. Whiting, did you not?

A. At his particular request I showed him the deeds. I did not do it of my own accord.

Q. How could he know as to the 27 lots, or how could you know unless you referred to the deeds?

A. He asked for the deeds to inform himself as to the location of the property, without making any reference as to what it cost me whatever.

Q. You started to say you gave him as a criterion. What did you mean?

A. My criterion was the information I had derived in regard to what the property had brought at auction. I had no other criterion to go by except the statement made to me, as I have referred to, by a gentleman who knew more about it than I did. My own experience in the matter was very limited.

Q. You stated in your direct examination yesterday that you saw Mr. Knowlton talking with the witnesses during their examination, or prior to their examination, in the city of Boston, in September

last? Did you ever hear a word that Mr. Knowlton said to any witness; and, if so, what witness, and what did you hear?

A. I have seen Mr. Knowlton talking to the witnesses. I have seen him take advantage of my absence and approach the witness then in the chair. I have not heard what he said, inasmuch as that he talks as low as he acts towards me. I have seen that much, and it proves to me that he is capable of anything below what a man should be guilty of doing.

476 Q. State what you have seen in that regard.

A. I have proofs in my possession and will produce them in due time.

Q. State what you have seen in that regard.

A. I have seen his writing to friends of mine assailing my standing and reputation as a lady. I now defy him to prove by or through one respectable individual an unladylike act of mine in my life. I court the most thorough and complete investigation.

Q. How have you heard Mr. Knowlton speak a word to any individual since his return from Boston and the filing of his bill against you in the superior court in Cook county in November last?

A. I have not heard him speak, except on hearing before Ezra Sherman and — his quarrel with Mr. Linsley, but I have seen him speak. I have become accustomed to observe conversation because of my poor hearing. I am satisfied he spoke and on many occasions. I am further satisfied that he has taken every pains to assail me in every sense of the word, in the smallest sense that a creature could possibly attempt to do.

Q. That is information you have derived not only from your own observation, but from both your counsel, who are here present, have you not?

A. My counsel here present have nothing to do with and have said nothing in regard to what I am referring to. I do not

477 believe that they are in the habit of exercising and utilizing their time in such conversation. I do not believe they will encourage a lady to do anything but what is extremely honorable. I have the most implicit confidence in them and respect for them. What I have learned is from those that I have perfect confidence in. I have that which proves to me all that I say over his own signature.

Q. Produce it.

Counsel for Mrs. Hanbury instructs the witness not to produce the letter.

Mr. HILL: I insist on the remark being withdrawn and expunged from the record.

Q. Who advised you to sue out a writ of *ne exeat* against Mr. Knowlton?

Counsel for defendant objects, first, to any inquiry into what is called the *ne exeat* proceedings on the ground, *first*, that it is not proper cross-examination; second, that it is immaterial to the issues in this case; and, third, it is an attempt on the part of counsel for complain-

ant to fish out a cause of action against the attorneys for the defendant, Anna Hanbury, and the defendant herself in the State courts for the purpose of showing alleged malice.

Q. What makes you entertain so much malice towards Mr. Knowlton on this occasion?

Question objected to.

A. I entertain no malice. I am forgiving in spirit. I leave him to a higher power, who always assumes the right of revenge.
478 I am too conscientious to harbor revenge towards him or any one else, no matter what they may do. I am satisfied that, to those who are right, all things will come right in due time, and if I do not get my rights here I hope to hereafter.

Q. You formerly entertained a very high opinion of Mr. Knowlton, did you not?

A. I entertained for him an opinion such as would be derived from the confidence brought about by business transactions. At that time I had no reason to believe that he was not what he pretended to be; now I have all reason to believe and I firmly believe that he is the lowest creature I ever laid my eyes upon, and I trust I will never see his like again.

Adjourned to 2.30 p. m.

Q. As we closed the examination this morning you seemed to manifest considerable feeling against Mr. Knowlton. When did you first form an unfavorable opinion of Mr. Knowlton?

Objected to as having been answered before, and as irrelevant.

A. The opinion of the opposite attorney is wholly out of place as to my forming an unfavorable opinion recently or having any malice. My opinion of Knowlton commenced with his proceedings against me and his suit for $175, he bringing suit several days before the amount was due. I have no malice, and, as to my opinion of him, it is below my conception to form an opinion as to
479 what he is. As I have said before, he is the smallest creature I have ever laid my eyes upon, and a gentleman who would know the contents of what he has written of me I can scarcely believe would ever recognize him, knowing me as one who has endeavored to do right under all circumstances, and I defy him and all he knows to prove the contrary.

Q. Question repeated.

A. I gave you my answer. I formed it when he first brought the charge of fraud, which was unfounded in every sense of the word, except in his own corrupt brain.

Q. Mr. Knowlton has introduced in evidence in this case a letter which you wrote him in October last. Do you remember writing the letter?

A. In October the only letter I can recollect is one I wrote to him in answer to one he had written from Young's Hotel, in the city of Boston, a place which I am informed he did not stop at, but where he went to secure his paper and make believe that he lived there

I believed said letter informed him that I had found the deeds which I supposed were burned accidently by a German servant I had employed. I told him further that I had secured the writing desk I had sought for. I told him further he made no reference to the property that he had purchased or the deeds of trust thereon. If I remember correctly, these statements I have just made were part of the contents of the letter. The remainder I do not recall,
480 except that I told him that I was anxious for his return. I did not state why I was anxious, but my anxiety was to show him the discrepancies I discovered in the building inconsistent with the statements that he had made. I believe in said letter the words I expressed *are* some such words expressing the same will be found.

Q. At that time you had not formed an unfavorable opinion of Mr. Knowlton, had you?

(Objected to.)

A. I had not formed as unfavorable an opinion as I did more recently, but I had come to the conclusion that he lacked principle, and that truth was foreign to his nature.

Q. Upon what did you found that conclusion?

A. From the fact that he had told me that No. 18 was a substantial building; that he built it, and it was perfect in every sense of the word. He told me it was worth $8,000. He further told me that the other two houses ought to bring $40 apiece rent each month. He told me that No. 18 would bring in over $100 a month. He told me the tenants were well-paying and very nice people. He afterwards told me they did not pay him, the rent was due, and I would have trouble with them.

Q. What was the matter with No. 18?

A. No. 18 is simply, in every sense of the word, what gentlemen term a "botch," although the gentleman who testified here yesterday
481 testified to the value, I believe, being somewhere in the neighborhood of $3,200. I have talked with those who know (objected to), who say that it is not worth any such amount. I am satisfied from my own observation, from the amount I have expended upon it to make it appear habitable, that it is not, in every sense of the word, a safe building, and any architect will form an understanding who will examine the same will not contradict my statement.

Q. What was the matter with No. 18?

A. The matter was what I have stated. He stated it was perfectly built, perfectly finished, something that was wholly false. If the tenants had not paid him it was because they discovered discrepancies in regard to the finish of the same, which he had promised. I never had any trouble with them in, the collecting of rents, and collected every dollar due me from the day I took possession until this day—even the amount that was put into the U. S. court and ordered back to me by Judge Blodgett.

Q. What he told you in regard to the tenants was true, was it not?

A. It was not true. It was true in the sense that they did not pay, but it was not true that the house was perfect, as he had agreed to make it for them.

Q. Question repeated.

A. It was not.

Q. Why not?

A. It was not true in the sense that he expressed it to me. It was true in the sense that the money was due, and that they had not paid it. I am satisfied the tenants were such people as
482 would pay any one that done as they had agreed to. I have always endeavored to do as I have agreed to, and they have paid me.

Q. I thought you claimed that he made some misrepresentations as to the character of the tenants who occupied the building.

A. He made no representation as to the character; he made representations in regard to their being deficient in paying the rent when it was due, and claimed they were not desirable tenants to have, because of their not-compliance with the lease drawn between both parties.

Q. He made no representations of this kind before you closed the trade with him, did he?

A. He did not. Everything was all right and beautiful, and that I would derive a nice income from the said property and have no trouble in collecting my rents. It was only on his return from Boston that he made the statement to me. I would have nothing more to do with one who would change his mind so easily.

Q. Then the representations that were made before closing the sale to you, as to the tenants who occupied the building, have proved exactly true, have they not?

Objected to as having been answered before.

A. In the sense I have spoken of; in the other sense, they have not.

Q. In what sense have they?

A. In the sense the rent was due and they did not pay it. On the other hand, that he was deficient in completing the house as
483 he had agreed to, and that was the cause of their not paying. They have paid me and I still retain the utmost kindness towards them, as they do for me.

Q. The representations which Knowlton made to you before closing the trade, as to the tenants who occupied the buildings here in Chicago, have proved exactly true, have they not?

Objected to as having been answered before.

A. As far as I am concerned, they have always paid me the rent.

Q. I did not ask that question.

A. On the other hand, in regard to the building, his statements are strictly, and I have ever found them entirely, untrue.

Q. Did you not examine the buildings before making the exchange?

A. Superficially, I did.

Q. Why superficially?

A. Because I was not competent, and supposed at the time all he told me was true. I thought he was a man that would tell the truth. I have not been in the habit of meeting with one who acted so strictly false as I discovered him to be. I was not in the habit of dealing with people who had not spoken the truth, to my knowledge—a fact which has cost me a lesson which I never will forget; he, Knowlton, the one that I have found deficient in every sense of the word in principle.

Q. What principle do you refer to?

A. I refer to the principle of recognizing him when I first
484 met him as a gentleman and found him wanting. I found him wanting in what he then seemed to be.

Q. What did he seem then to be?

A. He seemed and appeared to act like an honest man. When I found to the contrary I told him I wanted nothing more to do with him. He answered back he was sorry that I had such unpleasant feelings and hoped I would change my mind; but further experience has taught me that he is worse than I ever supposed a man could be.

Q. You then entertain feelings of malice against Knowlton?

Objected to—first, because the answer is sought for another purpose, foreign to this controversy; second, it is not proper cross-examination; third, if they regard the witness as their own now, and so ask the question, it is leading; and, fourth, it is entirely irrelevant, immaterial, and foreign to the issues.

A. Not in the least. I do not think it worth my while. I have no malice against a human being; I do not care to have. Life is too short at most to entertain any such feelings towards a man or woman.

Q. What was the matter with No. 20, if anything?

A. No. 20; I do not believe I have claimed there was anything the matter at that particular time; but the present tenant, Mr. Linsley, has informed me that the walls have been very much deranged by the building No. 18, and that he cautioned Knowlton at
485 the time that it would make his house unsafe to join it to an 18-inch house, and he expected from time to time that the house would tumble down during the building. I have also had to put in new sewer pipe outside of the house, the pipe there being entirely worn out and bursting through. At No. 22 I have had to do the same.

Q. How about 22?

A. The sewerage was out of order and the pipes had given out and I had to put them in order.

Q. In making the exchange with Knowlton how did you arrive at the comparative value between the 27 lots in Boston and the Winthrop Place property?

A. I did not arrive at the comparative value. I had arrived at a conclusion because of the statements expressed by Knowlton and his

desire to make the exchange, and his promise made on the 24th, when he brought to me the letter from Knight. Whether I read that letter I cannot recollect, but I do remember that he made the remark that he could keep the old mortgage alive and make it about an equal exchange; that was the criterion for me to go by afterwards; and in further debate of the matter I had forgotten that he had loaned me $500 at the time Knight's letter was introduced, but he recalled it to my mind and made it appear, with $1,500 on my side and $1,800 on his side, there would be a difference of $300 in his favor, and on that suggestion we acted. We debated on the
486 2d of September, to my knowledge, and I am satisfied we did on the 4th of September, and concluded to close the arrangement on the 7th, and it was concluded on the 8th.

Q. How did you arrive at the value of the Boston property as compared with this property here?

A. I placed no value on the Boston property, notwithstanding he asked me what I thought it was worth. I informed him I was incompetent and could place no figures on it. He asked me if I thought it would bring $12,000. I told him that I felt incompetent to place any figures on it, and I couldn't say what it was worth.

Q. Your idea in regard to the Boston property was that its value at that time was wholly prospective, was it not?

Objected to as having been inquired into already.

A. My idea of the Boston property at that time was not only prospective, but I realized fully what I had paid for it, in every sense of the word. The property cost me nothing at the time, my taxes having been abated through friends. It was only my position and the maintenance of my children that prompted me to make the attempt to mortgage or sell, and, finally, at Knowlton's suggestion, to exchange.

Q. You told Knowlton, did you not, from the outset that the Boston property had only a prospective value?

487 A. While I may have told him that it had a prospective value I gave him no criterion as to its value except that which I knew and which I have already stated in my previous answer, and that is in regard to the information derived at the time I made the purchase.

Q. You communicated that information to him, did you not?

A. In the course of the conversation, and at his request, I communicated to him what he asked for. I cannot recollect an instance when I forced any information. He came to me; I never went to him; I never expected him. He called on me after the 24th. I had supposed the matter close after he received Knight's letter. I never expected to see him again; never said to him I desired to see him, and had fully made up my mind the exchange was dropped until he resumed it in all its old force.

Q. When were negotiations opened after this?

A. I cannot exactly state the date, but believe it might have been the 30th or the 31st day of August. I know the date we debated the matter, as near as I can consciously state, was the 2d day of Sep-

tember. The day was Saturday, and I was busy preparing my little girls for school. I told him he might call on Monday, and it was understood he would call and we would talk the matter over, which he did on Monday. I acted on his suggestion; told him I should pay off $200 in Boston, and on no conditions would I make the exchange unless my obligations were discharged; to which he
488 said he would decide fully by the following Thursday. He came and said he was prepared to make the exchange, and had made up his mind it was best for both parties, the contract being signed on the following day.

Q. All these obligations of yours in Boston have been paid off by or through Mr. Knowlton, have they not?

Objected to.

A. They have not been paid off by Knowlton. He has paid them only in part. He has paid my attorney $100. The settlement with Blaisdell amounted to $60, more or less, and there is still a deficiency due me of $40. Mr. Cottrell's bill was more than $100, and charged until the commencement of this present suit, and I have paid him $35, or within $5.00 of the amount I believe Knowlton should have paid, and which, I am informed and believe, he has not paid, said amount being still due to me.

Q. How much money was Mr. Knowlton to pay in this exchange?

Objected to, the contract which has been introduced by the complainant showing that fact.

A. Mr. Knowlton was to pay $1,000, provided it took that amount to pay Mr. Blaisdell and my attorney and the mortgage, the mortgage being $800. *With* my attorney's bill and Mr. Blaisdell covered the $200 Knowlton was to pay. If, on the other hand, there was any sum left after paying my attorney and Blaisdell it was to go towards paying the taxes of that year on the Clarendon Hills property.

Q. The taxes have been paid, have they not?

489 Objected to.

A. I do not know. I have not made any inquiries in regard to Mr. Knowlton's connection with said property, outside of my interest in said mortgage of $800, until I knew it was satisfied; it was discharged as I desired it to be.

Q. The mortgage has been discharged and paid, has it?

A. I believe it has. My attorney informs me it has. He found it was assigned from Fales to Bamford and discharged by Bamford. The money paid by Charles J. Page which he claimed to have received from Chicago.

Q. How much money was paid on that mortgage?

A. The mortgage itself was $800. I suppose that $800 was paid. I don't know the conditions of the discharge of the mortgage.

Q. There was some back interest, was there not?

A. Only a very little. I don't remember what the figures were, and would have to write to Mr. Bamford to ascertain.

Q. Then he paid Cottrell $100, did he?

A. I derived that knowledge from Mr. Cottrell that he did receive $100 from Knowlton.

Q. Then you wrote to Knowlton not to pay Mr. Cottrell any more money, did you not?

A. I don't know. I wrote him not to pay any more money. I don't remember what I wrote. I remember of his asking me in some such words if it was right to pay Cottrell; and, to prove to him everything was all right, I believe I wrote him and stated I would send to my attorney for his bill, and when he returned
490 to Chicago he could adjust the matter through me, and if there was anything left over from his bill and Blaisdell he could retain it. I believe the letter will prove these very words. That was my meaning when I wrote such a letter.

Q. You don't deny you instructed Knowlton not to pay Cottrell any more money, do you.

Objected to.

A. In his letter to me Mr. Knowlton intimated something in regard to the excessive charges of Mr. Cottrell. I did not know Mr. Cottrell's bill in detail at that time. I wrote Mr. Knowlton I would send for the bill, and when he returned to Chicago he could pay the money to me or send it direct from here. I told him I did not wish him to say anything to my attorney, for the reason I did not wish to hurt his feelings and desired to please both gentlemen and carry everything through honorably.

Q. Were these instructions in writing or verbally to Mr. Knowlton?

A. They were in writing, if I remember correctly. The letter was in answer to one I spoke of written by him on paper of Young's Hotel.

Q. Were you there when Knowlton wrote the letter?

A. I was not. I was in the city of Chicago.

Q. Then what you have testified to about the paper and the writing from Young's *letter* is drawn from your imagination, is it not?

A. Not particularly drawn from my imagination. I had
491 inquiries instituted to ascertain if he had been there and discovered—or they stated there was no such name on the register. I have also discovered that he has written from Young's Hotel since then, and stated to gentlemen friends he was stopping there, when I discovered the second day after there was no such person registered at the house, yet I know he wrote on the 4th of last September on paper headed "Young's Hotel," and the envelope the same.

Q. You don't know these facts of your own knowledge, do you?

A. I know the facts of my own knowledge as far as last September is concerned. Ascertaining that such a letter was written, I went there — if such a person stopped there. The answer to my inquiry was in the negative.

Q. Would it not be possible that Mr. Knowlton might have stopped at Young's Hotel and not registered his name there?

A. I don't know anything about that. I think the custom of the hotel is that all guests must register, as it is considered a first-class hotel.

Q. Do you not know it is one of the largest eating-houses in the city of Boston, and that $\frac{9}{10}$ of the people that stop there do not register their names?

A. I don't know anything about it further than my supposition, and the custom of such places is to register names.

Q. Then you are satisfied with the uncertainty—that you know nothing about what you have testified to about the hotel?

492 A. I know nothing further than what I have testified to—that I have lived in and away from Boston for many years, and I have always believed Young's Hotel to be a first-class house and run consistent with anything but what was ambiguous. If there is anything to the contrary it is outside of my knowledge. I am not supposed to know how hotels are run.

Q. Did you ever stop at Young's Hotel?

A. No, sir.

Q. Did you ever dine there?

A. No, sir; I never dined there.

Q. Ever take a meal in the restaurant there?

A. No, sir.

Q. Have you ever been in the hotel?

A. I have been in the hotel to visit a lady friend many years ago, who was simply there to see her husband, who had stopped there, as it was not then the custom to receive lady boarders in the house.

Q. Did you make inquiries concerning Knowlton at Young's Hotel yourself?

A. I made the inquiries last September as to his stopping there. I made said inquiries personally. I attended entirely to my own affairs, and had no possible assistance, and employed no one else outside of my attorney.

Q. Then you were at Young's Hotel in September last?

A. I was at Young's Hotel, in the office, on the first floor, where the office is?

Q. Did you register your name or cause it to be registered?

A. I did not. I simply called to make inquiry about Mr.

493 Knowlton being there—to ascertain if he had stopped there at the time he wrote the letter I had received.

Q. What led you to suppose he was stopping at Young's Hotel when you received the letter?

A. The fact that the letter was written from there and on the paper printed for the use of the hotel. When you say what led me to suppose, I never supposed he was stopping there, but I wanted to satisfy myself whether he was or not.

Q. What difference did it make to you whether he stopped at Young's Hotel or the United States Hotel?

A. Because a gentleman friend informed him he stated to him he was going to Young's Hotel, where he was stopping. I told the gentleman I never believed he was stopping there, and I would sat-

isfy myself by going there to inquire, because I would like to know if he really lied to me.

Q. You were anxious to find Knowlton in the city of Boston in September last?

A. I was not anxious to find him; there was no occasion for anxiety, inasmuch as he was before me every day in Mr. Stetson's office; there was no occasion for my searching for him. I wished to know whether he was stating the truth, and I satisfied myself.

Q. Do you know anything about it of your own knowledge, except what somebody has told you?

A. I know nothing of my own knowledge, so far as seeing him there; I only know I go by the knowledge that is usually extended to those who apply for such information.

494 Q. You know nothing about it of your own knowledge?

A. I do not, outside of the fact I made the inquiry and the reply was "No."

Q. Did you interpose any objection to Knowlton's being present at the examination in Boston?

A. I didn't interpose any objection, though I was sorely tried to keep his counsel from prompting the witness by gestures and demonstrations, by promptings being made by Knowlton openly, Knowlton manifesting the keenest interest in everything that appeared favorable for the complainant, and I have seen him thoroughly displeased, and manifest his displeasure by striking his feet on the floor and his hand on the table, when evidence was rendered in my behalf.

Q. You were not pleased with Mr. Knowlton's presence on that occasion?

A. It didn't make any difference to me whether Knowlton was present or absent. I had as many witnesses as would consume the time, at the rate they took evidence, until next Christmas. I had 43 prepared to call and only examined 16, as my attorney said that a further number would be superfluous.

Q. Do you remember of telling me in Boston, about a month prior to this, that you proposed to see she—that was Mrs. Knowlton formerly—in New York? Did you see her?

Objected to.

A. I did. I stated I proposed to see her, and I saw her, or one that represented herself to be Mrs. Knowlton, and from the
495 fact that she explained many things to me I am satisfied, according to my own conception, that she is Mrs. Knowlton and the mother of a young boy who is now in the city of Chicago, I believe, in a hotel on Wabash Ave., and the former wife of the Knowlton who has brought suit against me in this matter.

Q. Then you took considerable interest in Mr. Knowlton's domestic matters, did you not?

A. Not any in his domestic matters, for I am not acquainted with them. According to his own statement, when I first met him, he had been a widower 13 years. It is only later on that I discovered

that he had a wife, and only then through my attorney and the examination he made in regard to the title.

Q. How did you learn of the former Mrs. Knowlton's whereabouts?

Objected to.

A. I heard of it through a gentleman who was then stopping in New York, when I made inquiries as to her whereabouts. I wrote him and he wrote me and sent me her address.

Q. Have you that letter that you received from him?

A. I do not know that I have, and I do not know that I have not. I received numerous letters, and it is possible I may have destroyed it.

Q. Will you please produce it at the next adjournment?

A. If I have such a letter I shall be willing to produce it.

496 Q. Entertaining, as you did then, such feelings of malice or contempt against Mr. Knowlton, why did you go out of your way to find said Mrs. Knowlton?

Objected to.

A. When the opposite attorney states and takes upon himself to say that I entertain malice I say he says that which is strictly false. Believing that Mr. and Mrs. Knowlton were separated for good, my interests were wholly in regard to Mrs. Knowlton and had nothing to do with him. I never made an inquiry of her to assist me in this case, and would not take such dishonorable measures, no matter how hard I should need evidence. What I sought was that which pertained to herself and to her own desires, and had not anything to do with Mr. Knowlton.

Q. Did you not tell me in the city of Boston that you sought her for the purpose of gaining information for the suit?

A. I did not. I did not say to you anything further than I expected to go to New York and see Mrs. Knowlton, and when you intimate anything of the kind it is purely false. There was no occasion for my going to Mrs. Knowlton or any one for assistance in this case. In the city of Boston, where everything pertains to the case, I can procure all that is necessary or will be allowed to vindicate me in this case, and I now propose, if you desire information, I will furnish it to any extent if you will pay the bills.

497 Q. Were not your own domestic matters and Mr. Knowlton's domestic matters the subject of conversation between you and him frequently here in the city of Chicago before you and he consummated the contract for an exchange of property?

A. I am not in the habit of discussing my domestic affairs with comparative strangers. I never made my domestic affairs the topic of entertainment for Mr. Knowlton. I never considered that he was worthy of confidence. If I wished to make confidants of my domestic matters, which I hold sacred, I can find those that I have known for many years who would sympathize with me, without putting myself out and forcing my troubles on a comparative stranger.

Q. Did he not tell you in some one of those interviews concerning which you have testified that he had had considerable trouble, which had led up to a divorce between himself and a former wife?

A. He never made an allusion to a divorce between himself and wife and never alluded or intimated that he had a wife in existence, and I never knew anything to the contrary until informed by my attorney. I was very much surprised on receiving the information, as I had supposed Mr. Knowlton's wife to have been dead for 13 years. I have known others who told me that he made the same statement to them—that his wife was dead and that he was a widower.

498 Q. Did you not tell him that you had had difficulty with your husband, and that you had to get a divorce?

A. Having had no difficulty with my husband, I could not have said anything of the kind. I might have stated to him, in the course of conversation in regard to the exchange of real estate, that I had received a divorce consistent with the laws of Massachusetts, and that I had received full title to my property independent of Mr. Hanbury. As to the cause that led to the divorce or anything pertaining thereto, I then, as now, consider the matter too sacred for such ears as his or those I know much better.

Q. Your counsel did not hesitate, at your suggestion, to interrogate Mr. Knowlton in that regard when he was upon the stand in this case, did he not?

A. I do not recollect whether he interrogated him or not. I do not recall the evidence then rendered.

Q. Were you present when Knowlton was examined in regard to his domestic matters by Mr. Rorke, Senior?

A. I was present, but, unfortunately, I am very hard of hearing, and did not catch all that was said, and have never read the evidence over from that day to this.

Q. You state in your direct examination that the first time you met Mr. Knowlton was at the corner of State and Madison,
499 in the city of Chicago, and that you went with him to Mr. Strauss' office, on the West Side. Why did you go with Mr. Knowlton at that time to Mr. Strauss' store?

Objected to, the witness having been examined in relation to the matter already.

A. Because Mr. Strauss's store was the only place where I was well acquainted to meet a stranger or converse with him, and because Mr. Strauss was a gentleman who had been kind enough to loan me money that I then desired to pay back, because I wished him to see that the obligation was my first consideration, and that I wished to do what was strictly right.

Q. Was it not because you wanted him to go there to see the diamonds on which you proposed to make a loan?

A. I could have had him come to my house and see the diamonds, but being advised by those who had my interest at stake that it was not safe to answer letters of those you did not know, as in such correspondence sometimes we are apt to answer parties who

are desiring to ascertain where you reside and afterwards burglarize the house for any valuables you might possess, I went on that account to have him examine the diamonds at No. 58 West Madison St., and because Mr. Strauss was a man I was obligated to and I desired to satisfy him I was going to do what was right.

Q. If you had the diamonds on at that time couldn't you have shown them to him without taking him over to the West Side?

500 A. It would have been out of place. It was not a proper place to exhibit anything of the kind on the street. Going over to the West Side admitted of more privacy, and all the parties interested could meet.

Q. Do you mean to say that Mr. Strauss let you have $200 on those diamonds, and without the retainment of the $200 he returned the diamonds into your possession?

A. I mean to say just exactly that he returned the diamonds, and I had them on when I met Mr. Knowlton.

Q. Did you write to Mr. Knowlton that you would have the diamonds on?

A. I did not.

Q. What did you write to Knowlton you would have on?

Objected to, as counsel has the original letter.

A. I cannot recall.

Q. Do you remember that fact as well as you do any other fact you have testified to concerning that interview?

Objected to.

A. Whatever I remember correctly I give exactly as I remember. I conceal nothing, desire to conceal nothing, and I wish to state I have nothing to conceal.

Q. Did you take the diamonds away from Strauss's store that night?

A. I did.

Q. Do you remember of Mr. Charles J. Shields calling at

501 Mr. Straus' store with Knowlton to look at those diamonds?

Objected to.

A. I remember his calling on the 29th day of June, in the forenoon, and I was led to believe by Knowlton that he desired Mr. Shields to call and examine the diamonds before he would loan the money.

Q. Who had the diamonds when Mr. Shields called there?

A. My having placed the diamonds in the case on that morning, I cannot recall whether they were laying on the desk when we called there or whether they were in my hands or in the hands of Mr. Knowlton; I only know I took them, but who held them when he called I don't remember.

Q. Mr. Bamford states in his examination, in Boston, in this case, that he had your 27 lots there in his hands for sale and for the payment of taxes for about 3 years, as your agent; is not that true?

Objected to on the ground the examination must be produced to show that he said that.

A. He may have supposed that he acted as agent because he had charge of the disposition of the grass and the payment of the interest on the mortgage. As far as I am individually concerned, I never have said otherwise than I stated to Mr. Bamford to make disposition of the property and only if he could get a good price for it to inform me and I would give him my idea in regard to it. I
502 never gave him a price he could sell it for since then or now.

Q. Who had the mortgage upon the furniture at 281 Michigan Ave.?

Objected to as immaterial and not proper cross-examination.

A. Mr. Strauss, 58 & 60 West Madison St.

Q. Was that mortgage given by you?

A. It was given by Mrs. Gardner; not by me.

Q. Who is Mrs. Gardner?

A. She was the lady who kept the house at the time I purchased. I don't know where she is now. I have never seen her since the summer of 1881. I believe she is somewhere in California.

Q. You purchased the house of her, did you not?

A. I didn't purchase the house; I purchased the contents.

Q. And the lease?

A. I did not purchase the lease.

Q. You assumed the lease?

A. I got a lease for myself from the date I took the house.

Q. How long prior to your meeting Knowlton had you lived at 281 Michigan Ave.?

A. I had lived there from the 1st of April, 1881, until June 28, 1882, when I first met Mr. Knowlton—a period of fifteen months.

Q. Do you know a gentleman by the name of Loring?

A. I know several Lorings.

Q. When you first went to 281 Michigan Ave. was there a gentleman there from Boston by the name of Loring?

A. There was.

Q. What was his full name?

A. John C. Loring.

503 Q. Where is he now?

A. I do not know.

Q. How long have you been acquainted with Mr. Loring?

A. I have been acquainted with him possibly since 1878 or '9.

Q. Is he not the gentleman who formerly owned the diamonds concerning which you have testified?

A. He may be the gentleman who formerly had the diamonds; his wife was the owner of them while she lived. I believe they were given to her by her father. I don't think the purchase was made by Mr. Loring.

Q. You were in great need of money in June and July, 1882, were you not?

Objected to as having been gone over before.

A. Not specially in need of money in July, 1882, but to make matters more easy in sending my little girls to school and make the usual preliminaries, I needed some money. I could have procured all I desired for them on my credit, without a question, but I preferred to arrange matters in my own way.

Q. With whom did you have credit?

A. I have credit with Willoughby & Hills, in the city, where you will find it stands all right. I have credit at Charles Gossage Co.'s, where I have had it since I have been in Chicago. I have paid my bills when it was most convenient. I have had credit for years in the city of Boston, and paid my bills possibly twice a year—the years I travelled. My disposition to pay when I can best
504 afford has never been questioned, and I do not think it is now. I have ever paid my bills to the extent of my ability and when most convenient, and, take it on the whole, I have not been short of money more than others who are differently circumstanced and think themselves better able to have — just when they need it.

Q. Who do you refer to?

A. I take the majority of people. Many people — have known had to borrow and were very well circumstanced. That has been my case. When I borrowed this money Mr. Strauss informed me had he known I would have to raise money on diamonds he would have accom-odated me. I will state, on that date I sold the house 281 Michigan Ave., he said he would trust me to the extent of $20,000.

Q. How did you expect to pay Mr. Knowlton when you borrowed the $400?

Objected to as immaterial.

A. I expected to sell the contents of my house or go East and raise money by mortgage, or sell a portion of the property.

Q. What property do you refer to?

A. I refer to the property at Clarendon Hills.

Q. Did you not know at that time that you could not sell that property for any reasonable price?

A. I did not know myself by my own knowledge, nor had I known for some years before. The only knowledge that I derived in regard to it was prior to my leaving Boston in 1881, and only through some source which I do not now remember. I was
505 obliged to keep the property and it would pay me very handsomely in the course of time. My attorney, at the same time, advised me to keep the property under all circumstances, as he has advised me ever since. I do not believe there is one who is more thoroughly concerned in my welfare than Mr. Cottrell, in Boston.

Q. With this advice, and knowing that you could not sell this property, why did you propose to sell a portion of it at that time?

A. I did not propose to positively sell a portion. I only said in case I could not sell the contents of 281 I would either mortgage or sell a portion. I did not know whether it would sell for a good or bad price. I only know that I did not make any attempt to sell the

property except on one occasion. That occasion has already been discussed.

Q. Then you told Mr. Knowlton in order to pay him you must either sell your house or sell a portion of this property or raise money upon the property, did you not?

A. I did not tell him I must. I used no such words. I told him that I expected to sell the contents of my house, or that I would go East and raise a mortgage or sell a portion of said property, meaning the Clarendon Hills property.

Q. Is it not a fact that the letters which he wrote to Boston were concerning the sale or mortgage of this property?

A. I do not know further than the affidavits made by Knight and Bamford and the reading of those letters, which I do not now
506 recall. The contents of it proved to me, with the little conception that I possessed, that Mr. Knowlton exercised the greatest shrewdness to draw out the value of said property by claiming, to the best of my belief, in one of those letters that he was owner or some such words, meaning asking what it could be mortgaged for or sold for.

Q. Those letters are in the possession of your *letters*. Will you please examine those carefully and to-morrow morning when you come here state whether you adhere to your statement which you have just made?

Adjourned to 11 o'clock a. m., to-morrow.

Parties met, pursuant to adjournment, at 11 a. m., October 25th, and the cross-examination of the witness was resumed as follows:

Q. On the 29th day of July, 1882, you state that you owed Mr. Knowlton the interest on $400, and, if I mistake not, he called to collect the interest on that day; am I correct?

A. On or about the 29th of July, 1882, is what I think I stated. Mr. Knowlton called on me in regard to the interest, which was not due, but would have been due in case I should have been able to pay it at the end of 60 days and not before.

Q. At that time that you asked him for an additional loan of $100?

A. Not at that particular date. I did not ask him for the loan on that day. I spoke to him that I might require such a loan,
507 and asked him if he could make it convenient to let me have it, to which he replied he would consider the matter.

Q. Had you prior to that time or did you on that occasion tell him you owned this real estate in Boston?

A. No, sir; I made no reference to it prior to that, positively; at that time I cannot state whether I did or not.

Q. When was the first time you mentioned to him you owned this real estate in Boston?

A. I know I mentioned it on the 9th of August, and may have done so on the previous occasion.

Q. What circumstances, as near as you can now remember, called out the information from you to him that you were possessed of this property?

Objected to as having been gone over before.

A. He called to know if I could pay the interest to that date. I told him that I was not prepared. I also told him that I should be by the time the money was due by disposing of the contents of my house or raising the mortgage on some of the property I owned East or disposing of a portion of the same. That is what drew it out.

Q. Were the deeds produced at that time?

A. Not at this time. They were produced on that day, but now, when I uttered these words, they were produced, at his request, later on.

Q. Was anything said on that occasion about an exchange of property between you and him?

A. Only that which was proposed by Mr. Knowlton.

Objected to.

508 Q. Please state what Mr. Knowlton said when you told him you proposed to sell your Eastern property or mortgage it to pay him in reference to an additional loan.

Objected to as before.

A. I do not recollect there was any reference made on that day to an additional loan, and I do not recollect any circumstances connected with it, except what I have stated. I know Knowlton asked me what my property consisted of and I explained.

Q. What did you say when you explained?

A. What I have stated already repeatedly, that it was unimproved, in a new portion of the city of Boston—Clarendon Hills—and I told him it was unproductive.

Q. State the exact language; state what he said and what you said.

A. What he said and what I said is what I have stated.

Q. I want the exact language.

Objected to as before.

A. He asked me how I would like to exchange it for improved Chicago property. I answered it would suit me best of all things if I could get a fair value for my property.

Q. What was Mr. Knowlton's exact language when he asked you to produce the deeds?

Objected to.

Q. State as near as you can.

A. Mrs. Hanbury, have you the abstract of your property or the deeds or the map? To which I answered, to the best of my
509 recollection, that I had the deeds and there were mementoes, but I did not believe I had them there. I produced the deeds, at his request, when he asked me.

Q. You were at this time asking him for an additional loan of $100?

A. I do not recollect. I asked for a loan on that particular date. I have never said or stated the particular date I asked for the

hundred dollars, inasmuch as my memory is at fault and I have not the notes, which were burned with a number of other papers.

Q. As near as you can remember, what was the date these deeds were produced?

Objected to as before.

A. The first day I produced the deeds was on the 9th, the second on the 10th, when he took them with him and retained them with him or elsewhere until the 15th, when he returned them to me, as it was agreed at the time he took them.

Q. When did you first learn that he was the owner of the Winthrop Place property?

A. On the 9th day of August. I am positive I knew on that day, but cannot recall whether there was anything said before that. To the best of my knowledge it was August 9, 1882, the time when he proposed to make the exchange for property that belonged to him on Winthrop Place, on the West Side. On the 10th he called again and asked for the deeds and asked if I would object to his taking them, to which I replied, "No." I asked him if his property was mortgaged, as I did not care to possess mortgaged property,
510 as I was not in a position to pay interest on mortgages, to which he replied his property was free and clear.

Objected to as not responsive.

Q. When did you first learn that he was the owner of the Winthrop Place property?

A. I am positive on the 9th of August; but whether there was any conversation in regard to it before I don't remember.

Q. On the 12th of August, 1882, Mr. Knowlton wrote two letters to Boston—one to R. Heber, Esq., and the other to S. R. Knight & Co. Since our adjournment last evening have you examined—*Q.* You are familiar with their contents, are you?

A. I am.

Q. Before those letters were written were you informed by Mr. Knowlton that he proposed to write to Boston in regard to the said property?

A. No, sir.

Q. When did you first learn that he had written to Boston?

A. I am positive I learned on the 15th, and may have learned before.

Q. How?

A. From Mr. Knowlton.

Q. What did he say when he told you he had written to Boston?

A. I told him he ought to go East and see the property.

Q. What did he say when he told you he had written to Boston?

A. He told me that he had written to Boston in answer to my asking if he had gone East or was going East. He told me that he had written to real estate men there, and, I believe, informed
511 me he got the names of the paper; he did not state what paper.

Q. Did he tell you for what purpose he had written?

A. He did not.

Q. Why did you tell him that he ought to go to Boston and examine this property?

A. Because he persisted in desiring me to go out and see his, to which I refused unless he went to Boston to see my property and satisfied himself in regard thereto. I refused to go and see his property until he brought a letter to me and stated he had satisfied himself in regard to my property East, and hoped I would no longer refrain from going to see his property; that day was the 21st of August. I agreed to meet him on the next day and did and went to see his property.

Answer objected to as not responsive.

Q. Do you mean to say that with the claim of Mr. Strauss standing over you, your indebtedness to Mr. Blaisdell, in Boston, the mortgage on the Boston property to Mrs. Cheever, which had been assigned to Mrs. Fales, the amount of money which you owed Mr. Knowlton, and the necessity for preparing your children for school that you asked Mr. Knowlton to take time and go to *to* Boston and examine this property and judge for himself?

A. The mortgage that was due on my furniture to Mr. Strauss had nothing to do with this transaction; it was to stand as long as I wished it, provided the installments were paid regularly. Under the other circumstances—what was due Mr. Knowlton and due
512 in Boston on my property—I did advise Mr. Knowlton to go to Boston and examine the same and satisfy himself in regard thereto, not once, but many times.

Q. Did you not tell Mr. Knowlton that you must do one of three things, either sell your house at 281 Michigan Ave. or sell a portion of this Boston property or obtain money thereon by mortgage, to meet your present necessities?

A. I never told Mr. Knowlton I must do anything. I never used the word must to him. I never gave him any such definition of my circumstances. I did tell him, as I have stated many times before, that I intended to make a disposition of the contents of my house or the equity therein or a portion of my property in the city of Boston or mortgage the same for my immediate use. I told him, further, if I sold the contents of my house there would be no occasion for my raising money in the city of Boston on mortgage or by the sale of property.

Q. Do you know of any other letters than these two which Mr. Knowlton wrote in the summer of 1882 regarding this property to any person or persons in the city of Boston or vicinity?

Objected to on the ground that it must be limited to some time between the 29th of July and the date of the articles of agreement.

Let the question be so limited.

A. I do not.

Q. You know that Mr. Knowlton did not go to Boston, do you not, prior to making this exchange?

A. I do not know anything about it. He had ample time
513 to go; there was no hurry. I advised him to go. There was no reason why he should not go.

Q. Question repeated.

A. I do not know anything about it.

Q. Do you know where Mr. Knowlton obtained the description of the property contained in his letter of Aug. 12, 1882, to S. R. Knight & Co.?

A. I do not know where he got the description, but I do know he asked me for deeds to enlighten himself as to the description of the property. Said deeds I delivered to him on the 10th. He read them over apparently on the 9th.

Q. You gave him those deeds for that purpose, did you not?

A. At his request I did.

Q. Those deeds formed the basis of all your subsequent negotiation between you and Mr. Knowlton concerning this Boston property, did they not?

Objected to as not proper cross-examination.

A. I don't think they did.

Q. Why not?

A. Because, independent of the deed, he took pains to inform himself, and stated he had satisfied himself by these inquiries he had made. He made no reference to the deeds after he returned them to me on the 15th until prior to his going to Boston, when he wanted me to give them to him. I could not find them; and then, again, about the 2d of December, I received a note written at the Grand Pacific Hotel, or on paper stamped with the hotel—the note
514 I received at 1328 Michigan Ave. It asked for the deeds. I wrote a letter where I knew he would receive it that I would have nothing to do with it; if he desired any such papers he would have to go to my attorneys, or words to that effect.

Q. If these deeds did not form the basis of your negotiation how did Mr. Knowlton arrive at a description of what you call the Clarendon Hills property?

Objected to on the ground that it is a legal proposition and not a matter of evidence.

A. He may have arrived at a description from those deeds, but he did not rely upon it as to make a basis of it for the foundation of carrying out this exchange, from the fact that he wrote and informed himself, as he afterwards told me, fully and completely, and was perfectly satisfied. Those deeds were never spoken of, and he took a copy of them, I afterwards saw, written on brown paper. He had that in his possession and there was no occasion to refer to the deeds.

Q. I thought you said, in answer to the former question, that you had no knowledge of any other letters that Mr. Knowlton had written to Boston, pending these negotiations, than the two—one to Heber and the other to Knight & Co.—before referred to?

A. I state the same now—that I do not know of any other letters but those two.

Q. Then the information which Mr. Knowlton obtained from Boston was in answer to these two letters, was it not?

Objected to as having been gone over before.

515 A. I do not know the contents of Mr. Knowlton's information. I only know that he told me he had received two answers to some of the letters that he had written to Boston. He may have been informed in a thousand ways that I know nothing about. I am stating that which I know. I never refer to that which I do not know.

Q. Did Mr. Knowlton tell you, pending these negotiations, that he had not been to Boston; that he had not seen this property, and that he relied upon the information in regard to the situation, location, and value explicitly upon the statements which you had, pending such negotiations, made to him concerning the same?

Objected to.

A. He never said—never made any such statement to me, and, if says he did, he states that which I must place in the same category with any statements which he has made, which are thoroughly false.

Q. Repeat the question and answer it yes or no.

Objected to, as it has already been answered.

A. He never made any such statement to me.

Q. Did you not know, pending these negotiations and up to the time of the execution of the written contract on September 8, 1882, between you and him, that Knowlton had never seen this property in Boston at all? Please answer the question yes or no.

A. If I am not allowed — to the best of my knowledge, in my own way, I decline to answer. I cannot answer it except in my own way. I did not know it. I wish to explain.

516 Objected to by counsel for complainant.

A. I did not know whether Mr. Knowlton had been to Boston or not; from then until the 28th I did not know. I gave him ample time, and, as I said before, told him to go, and supposed he had gone, and never pressed him as to whether he had or not.

—. Then, when you told him on that occasion, as you say you did, as follows: "Mr. Knowlton, you know I never said one word that would induce you to make this exchange. You know I have told you that you cannot sell this property at Clarendon Hill now or in the near future" you did not know whether Mr. Knowlton had been to Boston or not?

A. No, sir, except what I heard my attorney ask him, if he had seen the property, and he said no, but that he had satisfied himself in regard to the property. The question was put on the 8th of September, at the time of the signing of the contract, and only then I learned that Mr. Knowlton had not been to Boston by the reply he made to my attorney.

Q. Then, you knew on that occasion that Mr. Knowlton had not been to Boston, did you not?

A. I only know from what he said; from my experience with him I placed no reliance on what he said.

Q. At that time?

A. Now I do not.

Q. At that time?

A. At that time I do not know whether I did or not.

517 Q. What induced you to say to Mr. Knowlton on that occasion, "You know I have told you you cannot sell such property for years to come?"

A. I did not use any such expression.

Q. What expression did you use?

A. I said I have never induced you, said a word to induce you, to make this exchange, and you know I have told you always that you could not get a reasonable price for it now. I wish you all the success in the world; to which he replied, Thank you, Mrs. Hanbury. I have known that from the beginning, and will keep it for years, if necessary.

Q. What induced you to say these words to Knowlton on that occasion?

A. Because, the matter being completed, I was extending courtesy and kindly greeting on the exchange and its completion.

Q. This must have been rather a wet blanket to Mr. Knowlton, must it not?

Objected to as being obscure.

A. I do not understand the expression.

Q. Did you consider it courtesy and kindness to tell Mr. Knowlton that the property which you had transferred to him was such that he could not sell it for years to come?

A. My statement at that time was but a repetition of what I stated from the beginning of the understanding in regard to the exchange.

Q. Question repeated.

A. I considered it strictly kindly feeling, prompted by the best of motives. There was nothing underhanded in any of my dealings or acts or sayings. I had no such intention, and, the property

518 having cost me much more than it has cost him, I did not feel otherwise than that he ought to be perfectly satisfied.

Q. How much did the property cost you, as near as you can estimate it in dollars and cents?

Objected to as having been gone into yesterday.

A. I can only draw my conclusions. I cannot state my own personal knowledge as to what it would bring. What it cost is the equity allowed in my Cambridge property to the amount of $13,964, to the best of my knowledge.

Counsel for complainant offers in evidence the letter of Knowlton to Heber, dated August 12, 1882, marked Hanbury, "C," and a letter from Knowlton to S. R. Knight & Co., dated August 12, 1882,

marked Hanbury, "D," the original letters being returned to counsel for defendant-, to be produced on the hearing.

Q. I notice the number of feet contained in the lots as conveyed and described in these deeds from Page and Whiting, respectively, bears relation to the consideration of ten cts. per square foot; have you any explanation to make in regard to that fact?

Objected to, the deeds themselves being the best evidence.

A. None whatever.

Q. Did you not know when you handed the deed to Mr. Knowlton from Harvey A. Whiting and George O. Whiting to yourself that the consideration therein expressed of $19,962.37, as paid by you to them, was false and untrue in substance and in fact?

Objected to.

519 A. I did not know it was false and untrue in substance and in fact.

Q. What is the fact in regard to it?

A. The fact in regard to the case is that I exchanged my Cambridge property for the Clarendon Hills lots, the deed being made out for the amount of the exchange, he, Whiting, assuming the $6,000 mortgage, which made the deed strictly true, to the best of my knowledge.

Q. Then the assumption of a mortgage by Mr. Whiting upon your property at Cambridge of $6,000 increased rather than diminished the amount of the consideration, so far as you were concerned?

Objected to as being a legal conclusion.

A. I never made out the deed or dictated the making of it, and I do not believe I read it since then in my life. I never gave the matter any consideration, leaving it wholly to my attorney in Boston.

Q. How in regard to the consideration in the deed in Charles J. Page and James H. Page to said Whiting?

Objected to, the deed being the best evidence.

Q. Have you any information in regard to the consideration of that deed between those parties?

A. I never read the deed, and there is no information in regard thereto outside of the fact that at the time of the exchange of my Cambridge home for the Clarendon Hills property that Mr. Whiting and a gentleman interested placed the value at about $21,000,

520 or the amount mentioned in the deed. Mine was not appraised as high, and consequently Mr. Whiting retained one lot to make the exchange equal.

Q. Did you show Mr. Cottrell's letter which you received from Boston, pending these negotiations, to Knowlton?

A. I did. He read it through. I believe I showed it to him at his request.

Q. Do you still decline to produce that letter?

A. I have not got it and so cannot produce it.

Q. Will you state the contents of that letter?

A. I cannot.

Q. As near as you can remember?

Objected to on the ground — it is a confidential communication between the attorney and client.

(The witness declines to answer.)

Q. In the testimony of Theodore D. Moses, in Boston, he testifies, as you will remember, that there was an effort made quite recently to obtain from the proper authorities a crossing at Clarendon Hills station on Dale St. When was the first time you heard of an effort in that direction being made?

Objected to, because the deposition of the witness should be produced.

A. I do not remember Mr. Moses's evidence, and I do not remember that I have been informed of any effort being made for a crossing. I do not recall Mr. Moses's evidence. I never read it, and I did not hear half that he said.

Q. You never heard of an effort being made to obtain a crossing at Dale St. over the Boston and Providence road?

521 A. No, sir; while I may have heard some intimation, I cannot recall anything relating to it.

Q. You do not know whether your attorney or agents ever united in that effort, do you?

Objected to because it is not stated what attorney.

A. I am not aware of any such unity of action; individually I have never authorized anything of the kind in any way, shape, or manner.

Q. Has any application been made to you to unite in such a movement?

A. No, sir.

Q. When you went there to attend the auction sale, concerning which you have testified, in 1879, do you remember whether there was a crossing at Dale St. or not?

A. No, sir; I do not. I was not aware of the crossing being there or not being there until the commencement of the suit by Knowlton against myself. In said complaint, I believe, I first saw something of the kind; I never knew it otherwise.

Q. Do you know where Canterbury St. is?

A. I believe I have driven over the street; I do not know — I can locate it without a map.

Adjourned to 11 a. m., Tuesday, Oct. 30.

By agreement of parties, the time for defendant- to take testimony is extended to Nov. 8th.

522 Testimony of George Birkhoff, taken before H. W. Bishop, master in chancery of said court, on the 23d day of October, A. D. 1883, on behalf of defendant-.

Counsel for complainant objects to the testimony before the master for the reason that no notice of the application for the rule appoint-

ing a special examiner in this cause was served upon the complainant's solicitors.

Q. Please state your name, age, residence, and occupation.

A. George Birkhoff, Jr.

Q. What has been your business and for how long?

A. I am of the firm of W. D. Kerfoot & Company, real estate brokers; have been in the business 12 years.

Q. State if you looked at the houses Nos. 18, 20, and 22 Winthrop Place, city of Chicago, county of Cook, Illinois, and when.

A. I did; this morning.

Q. Are you conversant with the values of real estate on Winthrop Place?

A. Yes.

Q. What is the value of the lot occupied by No. 18, in lots 1 & 2 of McKay's subdivision; of lots 53, '4, '5, '6, in Taylor's subdivision; of block 43, in canal trustees' subdivision of the west half of northwest quarter, section 17 north, range 8*e*?

A. I can't tell whether that is the legal description or not. Give me the number of the houses, and I will tell you.

Q. I will ask you the value of the ground occupied by the house No. 18.

523 A. Well, I consider that ground worth $35 a front foot.

Mr. HILL: How many feet are there?

A. I think, 24.

Mr. RORKE: What do you value these lots on which the houses 20 and 22 are?

A. The same price—$35 a foot.

Q. I will ask you if you know the value of the building on No. 18, the most northerly?

A. Well, I think that building is worth about $3,200.

Q. What is the value of the building next south of it—two houses?

A. $1,500 each.

Cross-examination declined.

GEO. BIRKHOFF, JR.

Sworn and subscribed before me—

——— ———,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

524 Testimony of Anna Hanbury, taken before H. W. Bishop, master in chancery of said court, on the 30th day of October, A. D. 1883, on behalf of defendants.

Mr. HILL:

Q. In reference to the letter of introduction concerning which you have testified, did Mr. Knowlton ask you for that letter or did you offer to give it to him?

Objected to as having been gone over before.

A. I offered to give him a letter of introduction which I wrote, and which he objected to and desired me to change to suit his taste. I wrote the letter.

Q. If you did not know whether Mr. Knowlton had seen this land or not in Boston and was well informed in regard to it, why did you offer a letter of introduction to Mr. Bamford, your agent in Boston?

Objected to.

A. The adjustment of the mortgage had nothing to do with the property at all. The letter was for the purpose of introducing him to the gentleman he would pay the mortgage to.

Q. What did you say about the property in this letter to Mr. Bamford?

Objected to as having been inquired into before.

Q. What did Mr. Knowlton request you to put into this letter?

Objected to as before.

A. He wished me to make it appear that the property cost me ten cts. a foot. He stated he wanted Mr. Bamford to convey that
525 impression to any one who might apply to him in regard to the property. He stated he might possibly exchange the Clarendon Hills lot for Chicago property and might leave it in Mr. Bamford's hands to exchange or sell.

Q. The property was then in Mr. Bamford's hands for sale, was it not?

Objected to as before.

A. It was not, otherwise than what I have already stated.

Q. What did you say to Mr. Knowlton when he asked you to state this in this letter of introduction to Mr. Bamford?

Objected to as before.

A. I said the property had not cost me that amount and I could not write it. The only way I could write it to be consistent would be the price brought at auction as reported to me.

Q. You knew at this time Mr. Knowlton had not seen the property, did you not?

Objected to as before.

A. Only what he said.

Q. You now say, then, do you, that this property did not cost you ten cts. per foot?

Objected to, the matter having been fully inquired into before.

A. I have not said what the property did cost me as far as money goes. I stated what it cost in the way of exchange.

Q. You stated that Mr. Strauss had said to you that he would trust you to the amount of $20,000?

526 A. That is, in fitting up a house—a hotel—with furniture, to the extent of $20,000.

Mr. RORKE: To the extent of how much?

A. He said he would trust me to the extent of $20,000 for furniture.

Q. Did you say house or hotel?

A. I can't recall. It must have been hotel. He stated it, without doubt.

Q. When was this, as nearly as you can remember?

A. Some time in the fall of 1882; during the summer or fall.

Q. Before you had made the exchange with Mr. Knowlton?

A. I do not think it had anything to do with the exchange.

Q. Was this matter with Strauss before you made the exchange with Mr. Knowlton?

A. I think it was.

Q. Did Strauss at this time know you were the owner of this Boston property?

A. I do not remember whether he did or not.

Q. Did you ever tell Mr. Strauss you were the owner of Boston property?

A. I do not think I told Mr. Strauss what the value of the Boston property was. I may have said I had property in Boston, but I never went into any details in regard to it.

Q. What representations, if any, did you make to Strauss in order——

Objected to and question withdrawn.

Redirect examination waived.

ANNA HANBURY.

527 Testimony of M. A. Rorke, taken before H. W. Bishop, master in chancery of said court, on the 30th day of October, A. D. 1883, on behalf of defendants.

Int. 1. Please state your name, age, residence, and occupation.

A. Michael A. Rorke; age, 60 years; occupation, attorney and counsellor at law; office, 78 and 82 La Salle St.

Counsel for complainant objects to any testimony on the part of this witness, for the reason that he is the counsel and solicitor of the defendant.

Q. Do you know the complainant and defendants Hanbury and Knowlton or either of them?

A. I do not know the complainant. I know Mr. Knowlton and Mrs. Hanbury.

Q. When and where did you first see Mr. Knowlton?

A. I first saw Mr. Knowlton on the 8th of September, 1882.

Q. State what, if anything, then and there occurred.

A. Mrs. Hanbury and Mr. Knowlton came into the office, and I was instructed by them—but particularly by Mr. Knowlton—to draft articles of agreement for an exchange of lands, which I did, and the original of which I now present.

Q. Please produce the original.

A. I produce the original.

Offered in evidence, marked Ex. Rorke, "A," to be produced on the hearing.

528 A. I drafted this under the direction principally of Mr. Knowlton, who, I think, had a draft of the articles of agreement, and he dictated the lots—a good many in number—and I wrote them down from his dictation. I had a description of Mr. Knowlton's property in Chicago, which is also described here, and also took it down. When that was done, and after a good deal of conversation, I said it was near dinner time, and we cannot get this through now, and we will do it in the afternoon and meet again, and I went home to dinner; then I drafted the other one. They were duplicate originals and both acknowledged, this one in Mr. Knowlton's fine, bold hand and Mrs. Hanbury and I this one. The two were executed interchangeably, I may mention incidentally.

Objected to, the papers showing for themselves what they are.

Q. Was any question asked by any one present of either of the others touching the Clarendon Hills real estate? And, if so, give the question and answer.

Objected to as leading.

A. I asked Mr. Knowlton, When did you see the property? He said he never saw it; but says he, "I have posted myself about it." There was a great deal more said. I mentioned also to them I would record Mrs. Hanbury's part of the contract, and he said it was totally unnecessary; but I did record it the next day. I will mention in this connection that in making the second copy I made

529 a mistake of a lot in the other copy; whether it was the fault of myself I do not know. Mr. Knowlton called my attention to it the next day, and I rectified it. He said, You have made a mistake. I corrected it to his satisfaction and handed it to him.

Q. When and where did you next see Mr. Knowlton, and what was said or done by either of you?

A. I really saw Mr. Knowlton the next morning, when I corrected that error. He called my attention to it, and I saw him at least twice before the 26th of the month.

Q. What month?

A. I saw him on the 25th of September, and I saw him before the 25th. He brought me portions of the abstract of title, and when he did do it we had a pleasant conversation. He told me he was getting the balance of the abstract, and would furnish it to me on the 26th. I had the whole abstract, some original and some copy, but sufficient to make a careful examination of the title to his property.

Q. When and where did you next — Mr. Knowlton and Mrs. Hanbury, and what occurred?

A. On the 28th, the day of the execution of the deed, which I now produce.

Counsel for defendant produces and offers in evidence the deeds, which are marked "Ex's Rorke, B and C;" also certified copy of a deed from Anna Hanbury to Knowlton of the Clarendon Hills property, marked "Exhibit Rorke, D."

Q. State what occurred or was said or done by either the defendant Knowlton or Mrs. Hanbury on the 28th of September,
530 1882, at the time of the exchange of the deeds.

A. I addressed both Knowlton and Mrs. Hanbury, then present, and said, Mrs. Hanbury, Mr. Knowlton has preferred there should be warranty deeds instead of deeds of exchange, and, in deference to his wishes, I have drawn up a warranty deed from you to him of the Boston property, and two deeds from him to you of the Winthrop Place property; and, as the consideration in such cases is merely nominal, and as I have made a slight error in abstracting from the papers the original deed, I put in the sum of $21,000, taking it from Page's deed to Whiting. I took that as my basis, and therefore put the same amount in the deeds covering Knowlton's property as made the one $15,000 and the other $6,000, making $21,000 on each side. I mentioned the fact that Mr. Knowlton—I think it was on the 26th—said he would rather have warranty deeds than deeds of exchange, and of course his wishes should be carried out. I also called attention to the fact of the incumbrance of $1,800 which was assumed by Mrs. Hanbury and said I left a blank for the time the interest started, so they might regulate it themselves, and Mr. Knowlton said the interest, as I understood, was paid up to the 1st of October.

The understanding of the witness objected to.

A. I believe that is what I heard him say. I omitted afterwards to put it in the deed.

Q. What did he say in reference to an incumbrance on the property, if anything?

531 A. Hes said he could — controlled the incumbrance. I took no particular notice. It appeared by the abstract Baird and Bradley were the owners, and I knew it was perfectly safe. She was to pay $1,800.

Q. With interest from what time?

A. I understand it——

Objected to.

A. I understood from the 1st of October, 1882. I left a blank for it on the 26th. I think I had an interview. When Mr. Knowlton spoke to me I said, I see you are in bankruptcy, but there is no objection, as you are out of it.

Mr. HILL: Was Mrs. Hanbury present?

A. No, sir.

Objected to unless Mrs. Hanbury was present.

A. On the 26th Mr. Knowlton frankly told me he had gone into bankruptcy to avoid being held for obligations and forced in favor of his wife, from whom he was divorced. That matter of interest I

called attention to—I pointed to the deed. I drew up those deeds and left a blank on the second page—"$1,800 and interest from —." I said, I see this mortgage has matured on the 25th of June last. Then he stated what I stated, that he controlled the mortgage, and we talked about it some length of time.

Q. What did he say in regard to the interest being paid on the incumbrance, if anything?

Objected to as leading.

A. He said he controlled it and it was settled up to that time. I did not care anything about it. I supposed the property was good for twice that.

532 Q. Anything further said about the interest or anything in regard to the rate?

A. I would not be positive. I know I never heard of 9 per cent. until I saw it in the deed. My abstract did not show the rate of interest.

Q. State if, on the 28th of September or any other time before the commencement of this suit, *did* the defendant, Miner N. Knowlton, or the defendant, Anna Hanbury, in your presence name or in any manner refer to the complainant, Emily Hoyt.

A. I never heard a word until the 17th of February.

Q. When and where did you first hear of Emily Hoyt?

A. I saw the summons on the 17th of February, 1883.

Q. Did the defendants, Knowlton and Hanbury, in your presence ever speak of the respective value of the Clarendon Hills and the Winthrop Place property?

A. I never heard it. I never knew the value of the property really until Mr. Birkhoff stated it.

Q. When and where and from whom did you learn who Emily Hoyt is?

A. I am sure I heard Mr. Knowlton state before the master that Emily Hoyt was his sister—during the course of the examination on some of the occasions before Master Sherman.

Q. Has the defendant Knowlton taken any and what part, if any, in the matters connected with this suit, and what have you seen him, if anything, say or write in connection therewith?

A. I cannot say I heard him say much, except in the examination he has been active, intelligent, and painstaking. If it were his own case he could not be more energetic or more intelligent, I presume.

Objected to as incompetent and immaterial.

533 A. I think he has been very energetic throughout. I have seen him very often.

Q. On behalf of whom?

Objected to.

A. That would be a matter of opinion. I believe him to be the party himself.

Objected to.

Q. Did the defendant Knowlton ever call on you after September 28, 1882?

A. Yes, sir; Mr. Knowlton came in to me on the 28th of October, 1882, and requested the portions of the abstract connected with lot 2 on Winthrop Place, mentioned in the deeds. He asked me for the portion of the abstract connected with it and also asked me for the insurance. I told him as soon as I had an order I would give it to him. He brought an order the next day, and I gave it to him; maybe it was on the 2d of November I gave it to him. It was drawn in his own handwriting and signed by Mrs. Hanbury, and I handed it to him.

Q. Have you made a search for that order?

A. I have made a search. It is in his handwriting.

Q. Have you found it?

A. No, sir. On that occasion I had some conversation with Mr. Knowlton. He said I ought to advise Mrs. Hanbury to collect the rents, &c., and superintend it through him; that I ought to advise her to let him collect the rents and attend to the property. I told him I would do so. I saw him for the last time the 2d of November, and was astonished when I saw the suit commenced the next day.

Q. Look at that paper.

534 A. That is the bill which was filed the next day.

Offered in evidence by counsel for defendant and marked "Exhibit Rorke, E."

Objected to by counsel for complainant because it is the original bill and properly belongs to the files of the superior court.

Counsel for defendants Rorke and Hanbury desire to state that the bill in question, which is objected to, is incorporated at length in the evidence on behalf of the complainant, Emily Hoyt, before Master Sherman.

Q. In the deed from Hanbury to Knowlton of the Clarendon Hills property, marked "Ex. Rorke, D," as to the consideration of $21,000, how did it come to be inserted in that deed?

A. As soon as Mr. Knowlton said that he would prefer warranty deeds—that was the 26th—I immediately drafted the two deeds. In looking over the old deeds which are in evidence I opened one at $21,000 as a consideration, and I was in a hurry and I wrote down what I found in there.

Q. Describe the exhibit you took it from.

A. Ex. Hanbury B.

Q. Deed from whom?

A. From Charles J. Page and others to Harvey A. Whiting.

Q. Did the defendant, Anna Hanbury, have anything to do with fixing the amount of consideration in any of the three deeds?

A. She knew nothing about it, and I thought she looked disappointed.

Objected to.

535 A. She expressed surprise when I said I had drawn warranty deeds.

Q. At any time from the 28th of September to the execution of the deeds did she desire you——

A. I object to answering any question connected with Mrs. Hanbury's business, — which knowledge I derived as her attorney and counsel, unless Mr. Knowlton was present.

Adjourned to 3 o'clock p. m., October 31st.

MICHAEL ANDREW RORKE.

Cross-examination declined.
Defendant- rests.

Subscribed and sworn to before me this 30th October, 1883.

——— ———,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

536 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the Circuit Court. In Equity.

EMILY HOYT, Complainant,
vs.
ANNA HANBURY, MINER N. KNOWLTON, LYMAN Baird, Michael Andrew Rorke, Trustee; Charles J. Shields, William Lindsley, Sarah L. Robb, Ransom A. Givens, & Alonzo G. Collins, Defendants. } Gen. No. 18379. Term No. 765.

Take notice that on Tuesday, the 23d day of October, A. D. 1883, commencing at 10 a. m., before Hon. Henry W. Bishop, as examiner herein, in his office, room 34, 3d floor Custom-House building, Chicago, Illinois, the defendants, Anna Hanbury and Michael Andrew Rorke, trustee, will commence to take evidence in this district in their behalf, and thereafter, pursuant to the rule entered October 1st, 1883, herein, against all the defendants to said cause; and take further notice that said defendants, Hanbury and Rorke, desire the evidence in their defense before said examiner to be taken orally, pursuant to the amendments to the 67 rule of December term, 1861 & 1869, of the rules of practice for the courts of equity of the United States; also take notice that said Henry W. Bishop was this day appointed examiner by order entered of record, and that this notice

is to be regarded as an —llary to the notice to be given by said examiner.

Dated this 19th day of October, 1883.

M. A. RORKE & SON,
Att'ys for Def't Hanbury.

537 ANDREW M. RORKE, [SEAL.]
Att'y for Def't Rorke.

To E. J. Hill, Esq., att'y & of counsel for complainant; B. M. Mann, Esq., att'y & of counsel for def't, Miner N. Knowlton; Lyman Baird, Esq., def't, *per se.*

538 UNITED STATES OF AMERICA, }
Northern District of Illinois, } *ss:*

Andrew M. Rorke, being first duly sworn, upon oath, according to law, deposes and says that he is one of the attorneys for the within-named defendants, Anna Hanbury, and the attorney of record for the said defendant, Michael Andrew Rorke, trustee, within named, and that on Saturday, the 20th day of October, A. D. 1883, he did serve the within notice on the within-named Edward J. Hill, said complainant's attorney of record, and upon the within-named defendant, Miner N. Knowlton, attorney of record, B. M. Mann, by delivering a copy of the within notice to each of said attorneys in the city of Chicago, county of Cook and State of Illinois, and in the district aforesaid.

ANDREW M. RORKE.

Subscribed and sworn to before me this 20th day of October, A. D. 1883.

MICHAEL ANDREW RORKE, [SEAL.]
A Notary Public in and for Cook Co., Ills.

539 Testimony of James Felch, taken before H. W. Bishop, master in chancery of said court, on the 9th day of November, A. D. 1883, on behalf of the defendants.

Int. 1. Please state your name, age, residence, and occupation.

A. James Felch; attorney-at-law; residence, Chicago.

Q. Were you a practicing lawyer in '82 and '3 in Chicago?

A. Yes.

Q. Look at the papers now shown you and state what they are.

A. These are the files in the case of Warburton and others against Mrs. Martin, general number 84416, superior court of Cook county, consisting of *præcipe*, summons, and declaration and plea of defendants, supported by affidavit.

Q. Please state who were the defendants' attorneys in that case.

A. Pedrick & Dawson appeared on the plea as attorneys.

Q. Who was the plaintiff's attorney?

A. I was plaintiff's attorney?

Q. Do you know Mrs. Olive A. Martin?

A. I do; she was the defendant in that suit.

Q. The present witness, Olive A. Martin?
A. Yes.
Q. The witness who has just testified before you?
A. Yes.
Q. Do you recollect a suit before Justice Haufmann, on the North Side, brought by Olive A. Martin?
A. Yes.
Q. Who was the principal witness for plaintiff in that suit?
A. Aside from the plaintiff herself, it was Mrs. Hanbury.
540 Q. One of the defendants in this suit?
A. Yes; the lady here.
Q. Please state on what sort of service you obtained judgment in the suit, 84416, of Warburton *vs.* Hanbury.
A. I obtained it on a service of summons by the sheriff, the sheriff's return, and also by the plea.

Cross-examination by Mr. HILL:

Q. Mrs. Martin did not appear personally?
A. No, sir.
Q. You don't know she was ever served, of your own knowledge?
A. No, sir.
Q. You don't know Pedrick & Dawson were retained as her attorneys?
A. That I do not know.
Q. You know nothing except what you see by the record?
A. Yes, sir.
Q. You took judgment by default on the plea?
A. Not by default. I took judgment by trial.
Q. There was no appearance whatever by her?
A. No, sir.
Q. You proved up the note?
A. No, sir.
Q. There was no appearance on the part of defendant by attorney?
A. No, sir.
Q. A jury was called and verdict and judgment rendered practically *and* default?
A. Lawyers know what that means; I was ready for trial when the case was called, and there was no defense.

541 Testimony of E. J. Hill, taken before H. W. Bishop, master in chancery of said court, on the 9th day of November, A. D. 1883, on behalf of the defendant.

I have examined the records in the county clerk's office and I find the records there show that the taxes were not paid, and that the property was sold as stated in that certificate of M. W. Ryan, which I offer in evidence, marked "Ex. A, Hill." I live at No. 39 Winthrop Place, in this city. I have lived there for the last four years, going on five. I am very well acquainted, I think, with the value of property in that vicinity. I know No. 22 Winthrop Place very well.

Counsel for defendants Rorke and Hanbury objects to any testimony as to the value of the premises described as the Winthrop Place property being given by Mr. Hill or any other witness, because complainants have closed their evidence and made out their case, and it is not in rebuttal of anything that has been offered by defendant-.

The WITNESS: I know Nos. 18, 20, and 22 Winthrop Place. I have had occasion to know concerning the prices of property there for the last ten years, and in that vicinity. No. 22 is worth $3,500; No. 20 is worth $3,200; No. 18 is worth $5,500.

Cross-examination by Mr. RORKE:

Q. You are the complainant's solicitor in this case?

A. I am.

542 Q. You are also the same gentleman who verified the bill after it was amended and before any evidence was taken in the case?

A. I am.

Q. How long have you been in the real estate business?

A. I am not in the real estate business now. I have dealt largely in real estate in the northwest in years gone by. I had a good deal of real estate and real estate litigation ever since I have lived in the city of Chicago.

Q. During the last ten years, in which you say you have been familiar with this property, how much of that time have you been engaged in the real estate business in the northwest?

A. Not very much in the northwest during that time. I have been quite familiar with the prices of real estate on the west side during that time.

Q. How long have you been familiar with the prices of real estate on the southwest side of Chicago, in the vicinity of Winthrop Place?

A. I have known this property ever since it was subdivided by Mr. Taylor, son-in-law of Tompkins, *on* Sinclair & Tompkins, for whom Winthrop Place was named originally Tompkins street.

Q. Do you own any property on Winthrop Place?

A. I have an equity in No. 39.

Q. Do you know a street called Nixon street?

A. I do.

Q. How far is that from this property?

A. One block west.

Q. Do you know the value, or did you at the time of the commencement of this suit know the value, of property on Nixon street?

543 A. I think I did.

Q. What was it worth?

A. Not worth as much as the property in Winthrop Place.

Q. How much is it worth per front foot? The lots are either 20 or 25 feet front by 100.

A. It is worth 20 to $35 now.

Q. What is the name of the little street just north of this property, running east and west?

A. Polk street.

Q. What is the value per front foot of the vacant lot opposite Winthrop Place, fronting south and perhaps 2 or 300 feet from this property?

A. I should say from 35 to $40 a front foot. Property has increased in value during the last six months.

Q. What was it worth in September, 1882?

A. It depends on the improvements.

Q. I mean unoccupied.

A. There is but little unoccupied property there.

Q. Question repeated.

A. There—worth about the same per front foot opposite Winthrop Place as it is on Winthrop Place.

Q. How much is that in dollars and cents?

A. Thirty-five to forty dollars.

Q. You lived on the west side fronting east on Winthrop Place?

A. I do.

Q. Property having an east front, is it or is it not regarded more valuable than property having the opposite front?

A. There is but very little difference on either side.

Q. Is not the west side of the street more preferable and
544 has it not a better market value per front foot?

A. I might be a little; not enough to make any difference; it is pleasanter in the afternoon on the west side.

Q. Did you see the house known as No. 18 building?

A. Yes, sir.

Q. How long a street is Winthrop Place?

A. There are 80 lots on the street; it is a street extending from Pope to Taylor.

Q. What is the distance?

A. I cannot tell you; it is one block.

Q. It is one city block?

A. One city block; there are 80 numbers on the street.

Q. In your opinion, as a real estate expert, does it make any difference whether a body of land called a lot is sold as a 20-foot lot or 25-foot lot; does it make any difference in the price per front foot?

A. Very little, if any.

Q. How far is this Winthrop Place from the street cars?

A. I think it is about seven blocks from the Van Buren street cars, and about four and a half from the Twelfth street.

Q. Is there any direct road to Winthrop Place from either line of horse cars?

A. As direct as you can go.

Q. Either north or south or east or west is there any direct road by which you can, without turning corners, reach Winthrop Place?

A. No, sir.

Q. Is not that a little garden inside of four streets?

A. It is situated between Loopis and Laflin and Polk and Taylor streets.

545 Q. Is there any street that leads directly through from Van Buren street?

A. Yes, sir; Loomis street and Polk street will take you to Winthrop Place and Loomis and Taylor street will take you, and Laflin and Polk street; it is very accessible.

Q. How much below the level of the new pavement of Taylor street is Winthrop Place?

A. The same level when it is brought up to grade.

Q. To what height has Taylor street been recently raised, in the vicinity of Winthrop Place?

A. To grade.

Q. How many feet high above Winthrop Place as Winthrop Place was originally graded?

A. I should say it was between three and four feet.

Q. Is it not a fact Taylor street has been raised to a height of somewhere between five and eight feet and paved this last summer?

A. It is not paved; it may be down near the convent; may be places where it is five feet, but do not think it has been raised as much as that at the corner.

Q. At the corner of Taylor street and Winthrop Place how many steps up do you have to go to reach the level of the sidewalk at Taylor street?

A. It is difficult to tell the steps up; the sidewalk is put upon an incline.

Q. How many feet is it, at the corner of Winthrop Place, from the sidewalk to the top of the sidewalk on Taylor street?

A. I should say about three and a quarter feet.

Q. How old is the house No. 18 Winthrop Place?

A. About two years.

Q. The typographical features of the land on Winthrop
546 Place are such they are pretty low, are they not, and swampy?

A. If it is topographical instead of typographical, I should say they were not low.

Q. How much water is in your cellar now?

A. I should say not any.

Q. How much in the houses on the same side of the street?

A. I don't think there is any in the houses on the same side of the street. There may be some in 42 and 45 that haven't the sewer connections yet.

Q. Do you know how much water is in the basement of No. 18?

A. I do not know anything about the basement of 18, as to water.

Q. Do you not know that the houses on the side of the street opposite you, on the same side as 18 and 22 Winthrop Place, are damp, mouldy, and sometimes filled with water?

A. I know some of them are.

Q. Do you know whether the premises 18, 20, and 22 have any water in them or not?

A. I do not know exactly as to this, but my impression is most of these houses on the side of the street have not been connected

with the new sewer put through the centre of the street; if not, there is water that will collect there.

Q. You have already stated that one method of reaching Winthrop Place is by Loomis street. Please state what the height of Loomis street is above Polk street at that corner—how many
547 steps up which you have to go.

A. Three and a half to four feet; at the lower part it may be a little higher than that.

Q. Did you ever make any examination of the walls at No. 18 Winthrop Place?

A. I saw them when they were erecting.

Q. Do you know their present condition?

A. Except from the outside.

Q. Do you know whether they are insecure now or not—unsafe and insecure?

A. I do not think they are.

Q. Do you know what material they are built of?

A. Yes, sir.

Q. What?

A. Brick and stone.

Q. What sort of brick? Is it not burnt bricks or second-hand bricks?

A. Yes, sir.

Q. Remnants of the Chicago fire?

A. I do not think they were remnants of the Chicago fire; they had evidently passed through a fire—a good many of them.

Q. Did you ever see the inside of 18 Winthrop Place?

A. I have.

Q. What is the value per front foot of vacant property on Winthrop Place, near the corner of Polk, either west or east front?

A. Thirty-five to forty dollars.

Q. Have you had, during your residence on Winthrop Place, any knowledge and experience in building houses?

A. I have had no experience in building houses, but I have had experience with those who have built them.

548 Q. In your valuation of property did it make any difference in your estimate as to whether the house was constructed in the different trades necessary to build it by one person as jack of all trades or by persons having the necessary mechanical skill to construct the different parts of the house?

A. Of course it would make a great difference as to the value of the property. For instance, if No. 18 had been built as other flats are being built around there it would be worth from seven to eight thousand dollars.

Q. Then you say vacant lots in this neighborhood would be worth 35 to $40 a front foot?

A. Yes, sir.

Q. Do you know the width of No. 20?

A. It is 20 feet, I think.

Q. No. 22?

A. Twenty feet.

Q. How wide should you say No. 18 was?
A. Twenty-five, I think.
Q. What sort of a house is No. 22—how many rooms?
A. I have never been in No. 22, but the buildings are nearly all alike there, and I have been litigating for one party or another as to all the houses on Winthrop Place, with the exception of six of the brick houses.
Q. Has No. 20 a basement?
A. It has not.
Q. Has No. 22 a basement?
A. It has not.
Q. Viewing them from the front what would you say they were?
A. Two-story brick.
Q. Ever build a two-story brick house like No-. 20 and 22 in the last ten years?

549 A. No, sir. I have seen a great many of them built.
Q. I am sure you never built a house like No. 18?
A. No, sir.
Q. Nor out of the materials of which it is composed?
A. Probably not.
Q. Nor in the manner in which that particular house is built?
A. Probably not.

550 STATE OF ILLINOIS, } ss:
County of Cook, }

I, M. W. Ryan, clerk of the county court of Cook county, in the State aforesaid, do hereby certify that sub-lots 1 & 2 of a sub'n of lots 53 to 56, in block 43; also lot 57 of block 43, all in the canal trustees' subd'n of the W. ½ and the W. ½ of the N. E. ¼ sec. 17, T. 39, R. 14, were sold Oct. 8th, 1883, for the State, county, & city taxes of 1882; all of which appears from the records and files in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county court, at my office, in the city of Chicago, in said county, this 7th day of November, A. D. 1883.

[SEAL.] M. W. RYAN,
Clerk of the County Court.

551 Testimony of Mrs. Olive A. Martin, taken before H. W. Bishop, master in chancery of said court, on the 9th day of November, A. D. 1883, on behalf of defendants.

Int. 1. Please state your name, age, residence, and occupation.
A. Olive A. Martin; 1353 Michigan Ave.
Q. The plaintiff in this suit is Emily Hoyt, of Stamford, Connecticut. Do you know her or who she is?
A. I don't know her.
Q. The defendants in this suit are Miner N. Knowlton, Anna Hanbury, Michael Andrew Rorke, and others. Are you acquainted with either of them; and, if so, which of them?
A. I am acquainted with Mr. Knowlton and somewhat with Mrs. Hanbury.

Q. How long have you known or been acquainted with Mrs. Hanbury?

A. Since September, '82—about the 18th—thereabouts.

Q. When and where did you first become acquainted with Miner N. Knowlton?

A. Met him at Mrs. Hanbury's, 1328 Michigan Ave.

Q. When?

A. Somewhere from the 26th to the 30th of September, the same month; I don't remember the dates.

Q. Last year?

A. 1882.

Q. What was the occasion of that meeting?

A. To consult with him about the loan of some money.

Q. Who was present at the interview between you and Mr. Knowlton on that occasion?

A. Mrs. Hanbury. I don't remember any one else besides Knowlton and myself.

552 Q. Do you remember the conversation between yourself and Mrs. Hanbury on that occasion? And, if so, state what you said and what Mrs. Hanbury said, as near as you can remember, in detail.

A. The conversation turned upon a certain bargain or sale made through Mrs. Hanbury's agent to myself, and Mrs. Hanbury remarked that she seldom employed agents to do business for her; she generally done it herself. Now, she says, in a bargain between Mr. Knowlton and me regarding some property or exchange of property of mine in Boston, Massachusetts, for his on the West Side, I done my business myself with him. There is no one, either agent or any one else, that had anything to do with it at all. He took my representations and my word regarding that property, and we made the sale; it was between him and me, and no one else; he took my statements.

Q. Was Mr. Knowlton present?

A. Yes; Mr. Knowlton was present; there was other conversation; very little. I didn't stay but little longer.

Q. Was there anything said about Mr. Knowlton having seen the Boston property; and, if so, what was said about that?

A. No; as I understand it, it was more; that he had not seen it; he took her word for it—her statement regarding it.

Counsel for defendant- objects to witness giving what she understands.

A. I understood only what she said; she said he took her word; didn't go there to see it.

553 Q. I will ask you one question. Who introduced you to Mr. Knowlton?

A. Mrs. Hanbury.

Q. How did she happen to introduce you to Mr. Knowlton?

A. I was wanting some money; had got to have it, and she said she could introduce me to a man that would loan me some; one of

her particular friends, and if I would meet her at such a time at her house she would have the man there.

Q. What did you do then?

A. I asked him for the money, and he was to call in a few days.

Q. Knowlton was the man that was introduced?

A. Knowlton was the man that was introduced.

Q. And this conversation, as to the exchange of the Boston property, took place on that occasion?

A. The first time I saw him I didn't know anything about the Boston affair.

Cross-examination by Mr. RORKE:

Q. When did you first come to Chicago?

A. I came there the last time about the 16th of that same month—September.

Q. What year?

A. '82.

Q. The 16th of September, '82?

A. Yes.

Q. Where did you stop?

A. I stopped at 1328 Michigan Ave.

Q. At the time you first came to Chicago where did you stop?

554 A. I stopped at the Young Woman's Boarding-House, on Cass St., 44.

Q. Did you know anything about Chicago when you came here?

A. I did not.

Q. A perfect stranger?

A. I was a perfect stranger.

Q. Where did you come from?

A. Lowell, Massachusetts.

Q. Why did you leave Lowell, Massachusetts?

A. I thought it would be better for my boys to come West.

Q. Were there any other reasons for leaving Lowell, Massachusetts?

A. No, sir.

Q. At the time you left Lowell, Massachusetts, were you a single lady or married or a widow?

A. I was a widow.

Q. Were your husband's affairs arranged at the time you left Lowell, Massachusetts?

Objected to as not a proper subject for cross-examination, being domestic matters and having nothing to do with this suit.

A. Certainly.

Q. At the time you left Lowell, Massachusetts, how long had you been a widow?

A. I was a widow 13 years.

Q. Prior to the time you left Lowell, Massachusetts, had you made any transfer of property in consequence of difficulties?

A. My property was all arranged.

Q. In other words, did you over make an assignment of your property in Lowell, Massachusetts, for the benefit of creditors?

A. Not for the benefit of creditors.

555 Q. For any purpose like that?

A. Well, I can only answer that I knew I was coming among treacherous people, and I thought I would make my property safe, not to wrong my children. It was not necessary, I learned afterwards.

Q. Did you have any trouble in adjusting the affairs of your husband in the courts or with other persons in Lowell, Massachusetts?

A. No, sir; no trouble in the courts.

Q. When did you first see Mrs. Hanbury?

A. Well, I don't remember just the day, but somewhere from the 17th to the 20th.

Q. How did you become acquainted with her?

A. Well, I had bought the house we call 1328 Michigan Ave.

Q. What house?

A. 1328 Michigan Ave.

Q. And that was when?

A. About somewhere from the 16th to the 20th. I had talked the matter over previous. I had talked the matter over when I first came here.

Q. When did you first come here?

A. I think somewhere from the 10th to the 16th.

Q. The month and year?

A. Same month, same year; it might have been a little earlier; I don't remember; it was in September.

Q. At the time of the introduction which Mrs. Hanbury gave you to Knowlton, how long had you known Mrs. Hanbury?

A. I had known Mrs. Hanbury from the time I first met her, which was somewhere about the 18th of the same month.

556 Q. Was the sale of 281 Michigan Ave. completed at the time Mrs. Hanbury introduced you to Knowlton?

A. Yes.

Q. It was?

A. Yes; and she had taken possession.

Q. Had she entered into possession of the house 281 Michigan Ave.?

A. Yes.

Q. What remained on your part, if anything, to be done by you at the time you were introduced to Knowlton by Mrs. Hanbury?

A. There was a certain note given.

Q. For how much?

—. $200.

Q. To whom was it due?

A. It was supposed to be to Mrs. Hanbury.

Q. Was that note ever paid?

A. I don't know anything about that note being paid?

Q. Did you ever pay it?

A. I didn't.

Q. Do you know of any proceedings being commenced upon that note?

A. No; there was no proceedings commenced upon me with the note.

Q. Were you served with a summons in a suit upon that note?

A. No, sir.

Q. By Mrs. Hanbury or anybody else?

A. No, sir.

Q. Did you ever employ a lawyer to defend you in a suit upon that note?

A. No, sir.

Q. How much was that note?

A. $200.

Q. Did you ever hear of a suit upon that note and judgment being recovered?

A. No, sir. All I ever know about that Mr. Collins came and talked to me once about it.

Q. Did you know of a suit being commenced and of the negotiations of Joseph Warburton and Collins?

557 A. No, sir; don't know anything about that.

Q. Did you ever employ an attorney to defend you in a suit brought upon that note?

A. No, sir.

Q. Did you ever swear to an affidavit that you had a defense to that note in the superior court of Cook county, in case general No. 84416?

Objected to unless the affidavit is produced.

A. I didn't know anything about that note; I didn't know anything about that.

Q. It is a fact that you never paid that note?

A. I never paid it.

Q. Did you swear to any affidavit of defense?

Any questions as to the affidavits objected to unless the affidavits are produced.

A. I never defended that suit at all—$200.

Q. You never defended that suit?

A. No.

Q. What was the name of your lawyer from November to February, 1883?

A. Lawyer; where—here?

Q. In Chicago, say from September, '82, to the month of February and March, '83?

A. It has been so rare that I have had a lawyer—I will tell you if I can think. It was a young man that boarded with me. I don't know as I can tell you; I had him so little I don't remember.

Q. How many suits did he have in charge, of yours, from the time that you entered Chicago, the 16th of September, '82, till June, '83?

A. All the suit I had was the $125 that Mrs. Hanbury and Warburton sponged out of me; that is all the suit I had.

Q. Where was it?

558 A. Where was it? It was before some justice court. It didn't amount to anything.

Q. Who was your principal witness on that occasion?

A. Mrs. Hanbury was.

Q. She is the lady you say sponged $125 out of you.

A. She wanted to.

Q. Who brought suit against you in the case?

A. Who brought the suit? It was not brought against me; I brought it against them.

Q. What suit did you bring against them; who were they?

A. Warburton and Collins.

Q. Joseph Warburton and Company?

A. Yes.

Q. You recovered a judgment against them, did you not?

A. Yes.

Q. $125?

A. Yes.

Q. Who enabled you to recover that judgment; who was your principal witness?

A. Mrs. Hanbury.

Q. She proved up your case for you, did she not?

A. I don't know whether she did or not.

Q. Before what justice of the peace was that brought, if any?

A. I don't remember his name.

Q. Suppose I tell you and refresh your recollection. Justice Henry A. Kaufmann, corner of North Clark and Michigan street.

A. Yes; it was.

Q. What did you say to Mrs. Hanbury, after the rendition of the judgment, in the hallway, after leaving the justice's office?

A. I didn't say anything to her at all, for she walked out of the court-room and took a carriage.

Q. Did you meet her the next day and have a talk over the trial?

559 A. I don't remember where I met her.

Q. Where was your home then?

A. 281 Michigan Ave.

Q. Did you see her the next day after the trial of the case?

A. I could not say.

Q. Did you have any conversation with her or she with you, and did you not make use of expressions of good will towards Mrs. Hanbury and thank her?

A. Out of common civility, I thanked her.

Q. You were then, at that time, good friends with Mrs. Hanbury?

A. We had not been intimate; I don't know how good friends we were.

Q. When did this trial take place?

A. You know more about it than I do.

Q. I can tell you exactly. It was the 26th day of October, '82. Does that help your recollection as to the date of the time of the trial of the suit?

A. It didn't amount to anything.

Q. How long after the introduction given by Mrs. Hanbury to Knowlton?

A. I should think somewhere from the 26th to the 30th of September.

Q. How long after that did the suit take place?

A. I don't remember.

Q. No recollection?

A. I don't recollect.

Q. No recollection whatever?

A. If I had I should say it.

Q. You recollect the fact that you were there at that suit and Mrs. Hanbury was there as your chief witness?

A. Yes; she was there.

Q. And in a day or two after that Mrs. Hanbury visited you and you thanked her for her kindness?

560 A. Yes; I presume I did.

Q. That is the only suit which you had, that with Warburton's Company?

A. That is the only suit.

Q. Either as plaintiff or defendant?

A. Either as plaintiff or defendant.

Q. Either against you or in your favor?

A. Certain.

Q. Are you on good terms now with Mrs. Hanbury?

A. I don't know why we are not. I never had any trouble with her, or she with me, only I always tell the truth.

Q. Did you make an affidavit for the defendant Knowlton in another suit?

A. Yes.

Q. How long ago was that?

A. I don't know; some time last winter, I think—the last spring or winter. I didn't take note of that.

Q. You have no recollection of the exact time?

A. No; I don't remember the exact time.

Q. You have testified in your direct examination to a conversation between Knowlton and the defendant, Mrs. Hanbury, in your presence, between the 20th and 26th of September, '82, at your house, 281 Michigan avenue, have you not?

A. No; I didn't have any conversation there.

Q. Have you testified to any conversation had in your presence between Knowlton and Mrs. Hanbury?

A. At my house?

Q. Any place.

A. 1328.

Q. Give the exact language used by Mrs. Hanbury on that occasion to Knowlton.

A. Well, possibly I can't give the same words; I didn't suppose it would ever be called up again.

561 Q. Then what you have testified to before are not the exact words used on that occasion?

A. Probably not, but the whole thing comes to this, that he took

her statement about her property in Boston, and on that they made their transfer—their change of property; nobody but her had aught to do with it—her and him.

Q. What date was it?

A. It was somewhere from the 26th to the 30th of September.

Q. What did Knowlton say in the presence of Mrs. Hanbury?

A. He said very little. I don't remember that he said anything; it all hap-ened in a moment.

Q. He came for the purpose of being introduced to you, did he not?

A. Yes; came by appointment with Mrs. Hanbury.

Q. For custom in his peculiar line of business?

A. Probably.

Q. Then the words used by Mrs. Hanbury were that he took her statement?

A. Yes.

Q. Was the word "understood" used by Mrs. Hanbury to Knowlton?

A. "Understood;" how do you mean that?

Q. Instead of statement.

A. No.

Q. Were the words "took my word" used instead of statement?

A. I don't know but she said them both, but she said statement surely.

Q. You are sure of the word statement?

A. Yes.

Q. And are you sure of any other form of expression that she may have used on that occasion; if so, what was it?

A. Well, I can repeat it all over again what she said, if you wish I should; the whole conversation and what caused it.

562 Q. Then your best recollection now is that she used the word "statement?"

A. I know she said he took her statement of the facts, and on that the bargain was made—the exchange of property.

Q. Do you know whether, at this time or not, from statements of Knowlton and Mrs. Hanbury, that the bargain or sale had been completed?

A. She said it was made—the bargain was made—and, of course, I supposed it was done with.

Q. Were there any other particulars with regard to the exchange of properties entered into before you on that occasion other than you have already stated?

A. Nothing that I can recollect.

Q. Then, you are sure she used the word "statement?"

A. I know she did.

Q. You are not sure that she used any other form of expression with regard to that than the word sratement?

A. I can only say what I recollect. I should not have remembered that, only I thought it showed smartness in Mrs. Hanbury that she could do her own business.

Q. Do you know whether or not she employed counsel at this time?

A. I don't know anything about that. I asked no questions. I only said, "H'm."

Q. Did you know at this time that Knowlton had a horror of lawyers?

A. I didn't know Mr. Knowlton at all. It was the first time I had met him; only knew of him from her. She said he was a friend of hers and a very nice man, and I thought as they

563 were scarce I would like to see one.

Q. How long did the entire conversation take?

A. Oh, I could not tell you; it only took a few moments. I was in a hurry.

Q. You were in a hurry, were you not, to get away; were you not to prepare supper at 281?

A. I was no- in such a hurry, but after I had done my business I left.

Q. And your business was an application for a loan to Knowlton; did you succeed?

A. Yes.

Q. How long have you known Knowlton?

A. Well, I think that was the first time I had known him—that night.

Q. Had you seen him before?

A. No.

Q. Have you continued to have dealings with Knowlton ever since?

A. Well, not a great deal.

Q. Did Knowlton make you a loan upon the contents of 281 Michigan Ave.?

A. No.

Q. Did not?

A. No.

Q. Did you purchase the premises subject to a mortgage?

A. Of Mrs. Hanbury?

Q. 281 Michigan Ave.?

A. Yes.

Q. Who held that mortgage?

A. Strauss he was called.

Q. Do you now own the premises known as 281 Michigan Ave.?

A. Oh, no, sir.

Q. Did you sell them?

A. I didn't sell the same things I bought.

Q. Now, who did you sell to?

A. Sell what to?

Q. The premises 281 Michigan Ave.?

A. When it was sold? I didn't sell what I bought. When it was sold it was sold to Mrs. McKanz.

564 Q. Who keeps it now?

A. Mrs. McKanz.

Q. Who is Mrs. Morris?

A. Well, I suppose she is Mrs. Morris. I don't know who she is. Mrs. Morris stayed there a month. I let her the house furnished.

Q. Do you let the house now furnished?

A. No; oh, no.

Q. Who took the lease? Did Mrs. Morris succeed you?

A. Mrs. Morris stayed there a month.

Q. After you left?

A. No; I was there in the house.

Q. Who took charge of the house during the month Mrs. Morris was there?

A. Mrs. Morris.

Q. You stopped there?

A. I stopped there.

Q. Who took the lease off Mrs. Morris's hands?

A. The lease came back to me.

Q. Has Knowlton ever had the lease of that house since?

A. No, sir.

Q. Has Knowlton a chattel mortgage on it now, do you know?

A. Has that anything to do with the case?

Objected to. Objection overruled.

Q. Question repeated.

A. I have never seen it—the chattel mortgage.

Q. Who runs the house now?

A. Mrs. McKants.

Q. Who is the owner of the furniture contained in the house?

A. Mrs. McKants is supposed to —. I don't know anything about it.

Q. Do you know a person named Van Pelt?

A. I have seen him going through the house.

Q. Do you know whether he lives there or not?

A. No; I don't think he does. I don't know anything about that house now. I have dropped it long ago.

Q. Where does Mr. Van Pelt live?

A. I don't know.

565 Q. Do you know him?

A. I should not know him if I should meet him.

Q. Did you ever meet him?

A. Never was introduced to him; saw him pass through the house once; that is all.

Q. Have you any interest in that house now?

A. I have not.

Q. Is the Mr. Van Pelt to whom I have referred and whom you have incidentally mentioned as having seen the same gentleman who ran for office lately?

A. I don't know.

Q. Now, you say you don't know who is the owner of the mortgage on the place—to whom it was given?

A. I don't know anything about that business.

Q. What is the name of the present occupant of the house?

A. Mrs. McKants. I don't know her first name.

Q. Is that the lady we know as Mrs. Morris?
A. Oh, no.
Q. Do you know who owns the house and lot?
A. I have forgotten the name. I know who the agent is.
Q. Do you know in whose name the lease now stands?
A. I know it if I could think of it. Mrs. Hanbury knows.
Q. Is the name Van Pelt?
A. The lease of the house? Of course, Mrs. McKants has the lease of it.
Q. From whom?
A. From the agent, Cooper.

Objected to, as the lease is the best evidence.

Q. Do you know what Knowlton's interest in that house now is?
A. I do not.
Q. Or in the territory contained in it?
A. No, sir; I don't know anything about his business.
566 Q. Or of his claims against the occupant or owner of the furniture?
A. No, sir; I know nothing of his claims.
Q. Are you indebted to Knowlton now?
A. No, sir; not a cent.
Q. Were you last spring, when you made that affidavit?
A. No, sir.
Q. What is the occasion of the sudden animosity which you have displayed towards Mrs. Hanbury since the first of December, '82?
A. I did not know that I had displayed any. I have not met her.
Q. Why did you volunteer to make affidavits against her here, containing statements to which you have testified to-day?
A. Volunteered? I didn't volunteer to come here. I was obliged to come.
Q. Who called upon you to make affidavits in the other suit—in Knowlton *vs.* Hanbury?
A. What suit?
Q. Some suit brought by Knowlton *vs.* Hanbury.
A. I don't remember the man's name,
Q. Suppose I give it to you. Was it D. M. Munn?
A. Seems to me it was.
Q. A short gentleman, with dark eyes and dark hair?
A. You could describe Mr. Hill that same way.
Q. This gentleman had a rosy complection; Mr. Hill is pale.
A. I could not tell by his complection; when I come to do business with a party I do not notice that.
Q. Who called with him?
A. I think he called alone.
Q. Did he say that he was sent by Knowlton?
A. No; he told me that he came to make an affidavit, or something like that.
567 Q. Do you know who has that note you signed as being due to Mrs. Hanbury?

A. Know; I don't know anything about it.
Q. You owe her that money yet?
A. No; I don't think I do.
Q. What did you say to Warburton when you gave the note?
A. I don't know as I said anything; supposed I was dealing with square people.
Q. What was it given for?
A. For some furniture that was not there in 281.
Q. How do you know it was not there?
A. I looked it over the second time and it was not there.
Q. From whom did you purchase 281 Michigan Ave.?
A. From Mrs. Hanbury, through her agent, Warburton.
Q. Did you see the property before you bought it and the furniture?
A. Yes.

Objected to because it is not a proper subject for cross-examination and is entirely irrelevant, incompetent, and immaterial matter, and the counsel is making the witness his own.

Q. Now, madam, to whom did you apply when you desired to purchase 281 Michigan Ave.?
A. I didn't apply; the agent came to me.
Q. Who was the agent?
A. Joseph Warburton & Co.—Collins, Warburton & Collins.
Q. Who showed you the house?
A. Mr. Collins and Mrs. Hanbury went through some of the rooms with us, telling me that was her needle-work, &c.
Q. Who called with you at the house to see the furniture?
A. Collins called one time and Warburton at another; Warburton the first time.
568 Q. Did Warburton show you the house?
A. We was not alone; part of the time one of the maids went with us.
Q. Did Collins at any other time show you the house?
A. Yes.
Q. Then from what you saw—you and Collins and Warburton—you made the bargain and sale?
A. We had talked with Mrs. Hanbury, of course, down at the house; had a conversation with her about it.
Q. Where was the bargain made—in whose office?
A. We had a great deal of talk in Mrs. Hanbury's parlor, and then the bargain was made in Warburton's office.
Q. Where was the note for $200 to Anna Hanbury signed by you?
A. In Warburton's office.
Q. Did you ever see Mrs. Hanbury before you purchased the property—the contents of 281 Michigan Ave.—until the time you concluded the sale at Warburton's office by yourself alone, or were you in the company of agents?
A. In company of agents.
Q. You relied, then, upon the statements made by——
A. Both of them.

Q. Collins & Warburton?
A. And Mrs. Hanbury.
Q. You had an opporturity to see the contents of the house?
A. Yes.
Q. You knew all about that house, then, did you not?
A. No; I did not.
Q. Did you see the house?
A. I did.
Q. When you entered into possession was it not the same?
A. Not all of it.
Q. What was missing?
A. A goodly number of things.
569 Q. I want you to state them.
A. There was pictures missing; there was very many things missing; there was towels, bedspreads. *Q.* She selected them out when we was there; she said all the pictures, only her own family pictures. There was not one picture when I got it.
Q. Did you see anything but family pictures?
A. Yes; pictures on the mortgage that Strauss held.
Q. Did you ever borrow money on a piano of Knowlton?
A. That was all the money I borrowed.
Q. How did you secure it—by chattel mortgage?
A. Yes.
Q. Did you not testify just now that you never gave Knowlton a chattel mortgage?
A. You said on the furniture of the house.
Q. You did give him this on the piano?
A. Yes.
Q. Ever pay him the money?
A. Certainly I did; sold it to somebody else and got more money for it.
Q. Did he make you a present of the piano?
A. No, sir; is — the kind of a man that makes presents?
Q. I don't know; where he has his own object to serve.
A. I am one that never is bought.
Q. Where do you now reside, madam?
A. 1353 Wabash Ave.
Q. Does Mr. Knowlton hold any securities on the furniture in that house?
A. No, sir; he had nothing to do with the buying of it.
Q. Who has been running the house for the last eight months?
A. What house?
Q. 1353 Wabash Ave.
A. Mrs. Reed had the house before I took it.
570 Q. Did Knowlton examine this house, 1353 Michigan Ave., before you took it? Did you have the benefit of Knowlton's knowledge of the world?
A. I went for Mr. Knowlton, but he was gone East, I believe.
Q. Did you and he ever go there together to see the house and examine it, and did he give an opinion for you?
A. He has since I bought it; once.

Q. You are accustomed to consult him upon bargains and sales, are you?

A. I didn't on this occasion. I bought it first.

Q. Did you ever run the house, 281 Michigan Ave., with Knowlton's furniture?

A. It was there, or somebody had some furniture there; it was not mine.

Q. Whose was it?

A. Either Knowlton's or somebody that he was acting as agent for. I didn't know anything about it.

Q. Do you know of his being an agent for Mr. Van Pelt?

A. I don't know anything about his business. I never asked him his business. I didn't ask him how much he sold it for.

Q. Who did you pay your rent to at the time Knowlton had the furniture there?

A. To the agent.

Q. Who was the agent?

A. Mr. Cooper.

Q. Did you pay any other rent for the use of the furniture?

A. No; what was it to me?

Q. Then you got the use of the furniture that Knowlton controlled, if he didn't own it for yourself?

A. I had to live somewhere with my family—well, no; I
571 didn't have the use of it. I took care of it and managed the house.

Q. Did you pay any compensation to Knowlton for it?

A. No.

Q. Then you had it for nothing?

A. I had it for renting the whole suite of rooms.

Q. Do you mean to say that Knowlton let you have a lot of valuable furniture without exacting some compensation for it?

A. Didn't he have the proceeds of the rooms that was let?

Q. Then you lived in a part of the house and Knowlton run the balance of the house?

A. No; he lived in one part if I would see the other was managed right.

Q. He owned the furniture in the other rooms and rented it?

A. I suppose they was all one party's.

Q. Who got the rent of the furnished rooms where Knowlton owned the furniture?

A. The rent was paid to me.

Q. Who did you pay the rent to of all the various rooms?

A. To Knowlton.

Q. How long did that arrangement continue?

A. I guess from in the spring—well, the house was torn up in the winter, wrong side out.

Q. You were to be a sort of curator or superintendent of the rooms, were you not?

A. Why, yes.

Q. You were to see who was to occupy them, and see if they were proper persons or not?

A. Certainly.

Q. How long did that arrangement continue?

A. I can't tell how many months it was, because I have forgotten when the house was fixed.

572 Q. How long since it ceased?

A. I guess it was the first of August or July.

Q. Then at the time you made this affidavit for Knowlton this arrangement was in existence, was it not?

A. Yes.

Q. Do you now remember what that affidavit contained?

A. Well, I suppose it contained about the same as this.

Q. Was it not much stronger than what you have testified here to-day in the direct examination?

A. It might have been. Let me see the paper and I will tell you.

All questions in regard to the affidavit objected to unless the affidavit is produced.

Q. I will ask you one question which you may remember independent of the paper: Was the affidavit read then to you by the learned gentleman that came to you? I hope it was not, for your sake.

A. I don't remember about that.

Q. And you don't remember the name of the gentleman before whom you swore it?

A. No; I think it was some such a name as—I don't know as he said who he came from.

Q. Do you mean to say that you didn't know you were swearing to an affidavit in behalf of Knowlton when you swore to that?

A. I told him what I knew; I don't think I read it over.

Q. Did he read it to you?

A. Haven't thought of it from that time to this.

Q. Didn't you ask the gentleman whether he came on behalf of Mrs. Hanbury or Mr. Knowlton?

573 A. I asked him if he came to get me into trouble. He said, "No," he only wanted me to tell the truth.

Q. And the way to keep out of trouble was to swear for Knowlton, was it?

A. It was to swear to the truth.

Q. Do you mean to tell me, madam, that it is possible that you could have sworn to an affidavit, which you wanted to know whether it would bring you into trouble, without knowing in whose behalf it was?

A. He wanted me to state the case—what happened. Of course, I asked when he came there who it was for.

Q. What was the answer?

A. That it was a case between Mr. Knowlton and Mrs. Hanbury. I didn't ask what the case was.

Q. Did the gentleman tell you who sent him?

A. No; I don't remember that he did.

Q. Don't you know whether or not it was Mrs. Hanbury?

A. I don't suppose it was.

Q. At that time would you have volunteered an expression of this nature—would you have volunteered an affidavit for Mrs. Hanbury?

A. As a matter of course if she had summoned me to state that I should have done it.

Q. Although you owed her $200?

A. That would not have made any difference.

Q. Do you think that the gentleman stated on whose behalf he called?

A. I presume he did.

Q. You don't know on whose behalf he stated the affidavit was made?

A. It was a case between Hanbury and Knowlton.

574 Q. You stated just now, in answer to a question, that the gentleman wanted you to state the case. Let me ask you, Was the paper written when it was brought to you?

Objected to unless the paper is here, as the paper is the best evidence.

A. I have forgotten about it.

Q. Do you mean to say you don't know anything about the paper you signed?

A. I don't know whether it was written or not before he came. I don't remember. I didn't charge my mind with those things.

Q. Although you were committing an injury to one person and a benefit to another?

A. I have never asked him a word about that case. I saw something in the paper last spring about it, and that is the first I knew there was trouble between the parties.

Q. You didn't, then, know that you would probably be called as a witness?

A. No, sir; I did not.

Q. When you saw that piece in the paper you showed it to your servant, did you not, and you were rejoiced that Mrs. Hanbury had got into trouble?

A. No, sir. I saw that piece in the paper—I refer to some time this spring. I had no servant in the house, only my sister with me, and that brought it up, when I was up there about this land affair, and I said to her why I was surprised, because I thought the bargain was a great bargain on both sides. I do not keep posted on other people's business, and have nothing in common with him.

Q. Do you know Lena Muller?

A. Yes, sir.

575 Q. Who is she?

A. She was the servant Mrs. Hanbury had for years, and remained with me for a little time.

Q. Have any talk with her after seeing this in the paper?

A. I did not see it in the papers then. She was not with me. When I left Mrs. Morris had the house.

Q. Were you rejoiced at the notoriety Mrs. Hanbury had through the instrumentality of Mr. Knowlton?

A. I was not rejoiced. I knew she had this notoriety before by the

paper, but I felt sorry for her, for I liked Mrs. Hanbury. I always feel sorry for a woman, no matter how they treat me—they are females or ladies.

Q. Do you know how much Mr. Knowlton sold the premises to Van Pelt, 281 Michigan Ave.?

A. I do not.

Q. Do you know whether or not Mr. Knowlton advertised the premises 281 Michigan Ave. as being for sale almost every week from the early spring to the end of July, 1883?

A. I knew it was advertised. I don't know how often.

Q. You never had any trouble with Mr. Knowlton, did you?

A. No, sir.

Q. Entertained sentiments of friendship for him?

A. Ours were business relations.

Q. Your business relations have been pleasant, have they not?

A. No occasion to quarrel. I paid him his full amount.

Q. Your business relations were not pleasant with Mrs. Hanbury, were they?

A. If they did not quite agree with my sentiments we got along pleasantly together.

Q. Do you know Mrs. Johnson, a colored lady—do you know a colored servant named Johnson or Mrs. Johnson?

576 A. I do not.

Q. Do you know a Mrs. Hicks?

A. No.

Q. Did Mr. Knowlton ever speak to you about three persons by the names of Mrs. Johnson, Mrs. Hicks, and Mrs. Ewing?

A. No; I never heard of them before.

Q. Did he ever attempt to bring these persons or either or any of them to the house managed by you to assist in running the house?

A. No, sir.

Q. During the period which you have spoken of, in which you had charge of rented rooms which were controlled by Knowlton, did Mr. Knowlton ever insist or ask you to allow other ladies to come in and assist you in the management of the rooms?

A. No, sir.

Q. Either as servants or in any other domestic capacity?

A. He never did; if he had I would have left.

A. Ever attempt to bring any persons, during your possession of the premises when the rent was paid by Knowlton, to assist you in running the house?

A. No, sir.

Counsel for Mrs. Hanbury objects to the reporter reading the questions to the witness, and the master rules that the questions may be read to the witness after being taken down by the reporter.

Q. When the $200 note due by you to Mrs. Hanbury was about to fall due state whether or not Mrs. Hanbury went with you to the bank to procure for you an extension of the same.

A. Yes, sir; she went to the bank with me.

Q. Did you get the extension?

A. Yes.

Q. At whose request was the extension given to you?

A. Mrs. Hanbury's.

576*a* Q. When was this?

A. I have forgotten the date. I know it was dated back wrong.

Q. What season of the year was it?

A. I think it was in October or thereabouts; some time following October or November; I don't just remember.

Q. After the purchase by you of 281 Michigan Ave. what, if anything, did Mrs. Hanbury do for you in the way of introducing you to tradespeople?

A. She introduced me to a party.

Q. Give the name.

A. His name was Mulzeen.

Q. Did she by her introduction enable you to get credit?

A. Possibly she wanted to get a customer for him.

Q. When was this?

A. Right after I went there. I don't know the date that I took possession.

Q. When did you take possession?

A. I think about the 20th or thereabouts of September; somewhere in that vicinity.

Counsel for the defendant, Anna Hanbury, declines to further cross-examine this witness because the questions on the cross-examination are repeated by the reporter, and when each question is put counsel for complainant directs the reporter each time to repeat the question, giving an interval of a minute between the time the question is put and also time for the witness to reflect on what her answer is.

Counsel for complainant withdraws all objection and respectfully asks the counsel to put his questions directly to the witness and to examine her *ad libitum*.

576*b* Q. I believe you stated Warburton and Collins or the firm of Warburton & Co. were Mrs. Hanbury's agents in Sept., '82. Did you not, in Sept., on or about the 16th or prior thereto, send Joseph Warburton or W. T. Collins, of the firm of Warburton & Co., considerable sums of money for the purpose of making investments in Chicago boarding-houses or otherwise?

Objected to as immaterial and incompetent.

A. The question is not put so I can answer it.

Q. What dealings did you have, if any, with Warburton & Co., Joseph Warburton, or W. T Collins during the month of September, '82, or prior thereto and prior to the purchase of 281 Michigan Ave.?

A. I bought through them No. 1328, the contents of the house of Dr Randall.

Q. Prior to the purchase of 281 Michigan Ave. what dealings did

you have with them or either of them; did you ever send them any sum or sums of money for investment?

A. No, sir; not for investment. I came and looked at the house and had it arranged as soon as the money could get to them.

Q. What money did you send to Warburton & Co.?

A. I sent two amounts of money.

Q. You had purchased the house prior to buying 281 Michigan avenue?

A. Yes.

Q. Where was that house?

A. 1328 Michigan Ave.

Q. Then Warburton & Co. were acting for you before the 16th of September, '82, as your agents?

A. They were acting as Dr. Randall's agents; going to get him a customer, if they could.

577 Q. After you purchased 1328 Michigan Ave., and at the close of the Dr. Randall transaction, did Warburton & Company continue to be your agents?

A. I was done with them, but he was Mrs. Warburton's agent and came to me to have me change with Mrs. Hanbury. I did not go to him.

Q. How did Warburton know you desired to make any exchange?

A. That I do not know. They came and proposed to me that that house was too small and that 281 was almost a paradise, a beautiful place, and Mrs. Hanbury had made two or three hundred dollars a month.

Q. At this time, in September, '82, and prior to the 20th of September, you had considerable confidence in Joseph Warburton, of that firm?

A. I had confidence enough to get him to do business.

Q. Did you intrust him with several hundred dollars of your money?

A. I trusted him with some money to pay the other parties.

Q. You had considerable confidence in Mr. Warburton's statements, had you not?

A. I had more than ten cents' worth.

Q. And after one of the firm came to you and suggested an exchange of boarding-houses you assented to the proposition and asked him to make the exchange, did you not?

A. Not at first.

Q. Did you afterwards?

A. Not when he first came.

Q. Did you afterwards do so?

578 A. I said I would look it over and if everything *as* as good as they represented, if every room was full and it was paying this amount of money, why, of course, I thought it was quite an exchange, quite a bonanza.

Q. At this time you had considerable confidence in Warburton, hadn't you?

A. I had more than I have got now.

Q. So much so you used to go to the theatre with him?

A. Oh, no; not often.
Q. Didn't go with Mr. Warburton?
A. That is none of your business?

Redirect examination:

Q. You have been interrogated in regard to the $200 note which you say you gave to Mrs. Hanbury. The reason that you did not pay that note was because you claimed there was a failure of consideration, was it not?
A. Yes, sir.
Q. The note was given on the exchange between your house, 1328, and 281 Michigan Ave.?
A. Yes, sir.
Q. And because the property that you purchased was not delivered to you, for which the note was given, you declined to pay the note?
A. Yes.
Q. Do you know what became of the note?
A. No, sir.
Mr. RORKE: One question I forgot to ask. Did you know anything about that judgment in the suit of Warburton and Collins *vs.* Martin for $203 in the superior court?
A. I didn't know anything about it.

Counsel for defendant objects to any inquiry about the judg-
579 ment unless the record is produced.

Mr. HILL: The suit might have been commenced against you on the note and you not be aware of it?
A. Probably. Mr. Collins came one night to see me and says, "— that note becomes due what are you going to do about it?" I said, "I don't know as anything." He said Mrs. Hanbury ought to pay that note and says, "She will have to pay it if you do not." I said, "You can't get any more than one has. If I have nothing, how can I pay it?" He said, "You have lost enough, Mrs. Martin. I don't blame you for not doing it. I don't think I will send a writ or summons to you at all," and I never received one. I have not heard from it since.
Q. You don't think you were sued at all?
A. He said he didn't think he would send a summons for me at all, and I never received one, and so I never heard of it from that time to this.
Q. Isn't it possible the sheriff might have served you with a writ?
A. Never; because I looked for one. I never received one, and I know it could not have been brought unless I received it.
Q. Supposing the record should be brought showing you had been served?
A. But I have not. I have not been served. I expected I would be for two or three weeks, but did not receive any paper and have never heard from it from that time to this.
Q. Do you know what Mrs. Hanbury did with that note?

A. I never inquired; had nobody to inquire of.

Q. How did Collins come to speak to you about the note?

580 A. He did not come afterwards.

Q. Mr. Rorke has repeatedly stated during the examination here that you were hostile to Mrs. Hanbury. How is that as a matter of fact? Have you any ill feeling towards Mrs. Hanbury?

A. I have no ill feelings towards Mrs. Hanbury.

Q. You felt as though the exchange which you made with her was disadvantageous to you, did you not?

A. Very, indeed; but I allowed it was through the agent, and she wanted to make the most of it she could.

Q. Did you ever have any words with her in regard to the matter at all?

A. Not much. We have spoken of it a little, but no hard words. I consulted counsel, and they told me it was no use; so I didn't carry it any further. I have no hard feelings against her whatever; it is business.

Q. You remember of my calling upon you last winter in regard to this matter, at 281 Michigan avenue, in regard to this matter in this suit?

A. Yes.

Q. The suit of Hoyt *vs.* Hanbury?

A. Yes.

Q. You made no affidavit at that time, did you?

A. No, sir.

Mr. RORKE: I offer in evidence the files of the superior court of Cook county, general number 84416, in the case of Joseph Warburton and W. T. Collins *vs.* Olive A. Martin; judgment February 2, 1883, for $203 and costs, and assignment filed November 9, '83, by complainant to Anna Hanbury. These files are received from the clerk of the superior court this day, and to be returned by

581 the master by 5 o'clock to-day.

To which counsel for complainant objects, for the reason that it does not appear that the party who produces these files is the custodian of the records of superior court of Cook county, or that they are the original files, and as incompetent, immaterial, and irrelevant.

Mr. RORKE: Look at the paper now shown you and state if your name is there.

A. Yes; it is there.

Q. State if you wrote the signature Olive A. Martin.

A. It looks like it, certainly, but I had forgotten all about it this morning.

Q. Did you or did you not swear to this paper before a notary public?

A. I have not read the papers. I presume I did, because the paper is the best evidence.

Q. You presume you did?

A. I have not read the paper. I presume I did.

Q. Who is George E. Dawson?

A. He is of the firm of Pedrick & Dawson.
Q. Was this affidavit made before him?

Objected to as before.

A. If the name is there, it was.
Q. That is the only means you have of knowing whether the paper was sworn to before him or not?
A. This morning I forgot all about it.
Q. Then there is an unpaid judgment against you upon this note which you gave to Anna Hanbury, is there not?
A. That is what they say.

Q. Look at the paper now handed to you and state whether
582 or not you were ever served with a summons in this case.

A. At this present time I don't remember that summons, and I can't call it up. Of course I was if the summons is here, but I don't remember one word about it.
Q. Where did you reside at that date—the 25th of October, '82?
A. 281 Michigan Ave.
Q. You have no recollection of being served?
A. I don't have any recollection of being served.
Mr. HILL: In view of the papers and files which are now produced and which you have looked at, you are satisfied a suit was commenced on that promissory note?
A. Yes.
Q. Did you ever employ the firm of Pedrick & Dawson to appear for you?
A. I don't remember doing so.
Q. Did you ever pay them any money?
A. When I paid them I paid them for everything they did for me; it was a lump sum.
Q. You were sued by Warburton & Collins in this suit. They held their note, did they not, in their hands against you?
A. Yes.
Q. They came to see you about it?
A. Yes.
Q. Did he ask you to pay the note?
A. He said, "What are you going to do about the note?"
Q. What did you say about that?
A. I says, I don't know as anything. I says, "You can't get any more than what I have got." He said, "Well, I don't think
583 you ought to pay that note—Mrs. Hanbury. Mrs. Hanbury is the one that reaps all the benefit of it, and she is the woman that ought to pay the note." I said, "I don't know anything about it." The conversation went on at great length.
Q. About when was this conversation?
A. I don't remember the date. He came and told me about it—talked half an hour or more—that I had been wronged, &c., and ought not to pay it.
Q. You never personally appeared in the suit?
A. No, sir.
Q. Never put in any defense and was not present at the trial?

A. No, sir.

Q. This note was dated September 4, '82; given, as I understand, as part of the trade you made with Mrs. Hanbury. Is that the date of the trade?

A. No; it should have been dated when the trade was made. It was dated back.

Q. When was the trade made?

A. Somewhere from the 18th to the 22d.

Q. Then, when you saw Mr. Knowlton for the first time, at Mrs. Hanbury's residence, 1328 Michigan Ave., the trade had already been made?

A. Yes.

Q. You had discovered then the discrepancy between what you had purchased and what you got, had you?

A. Yes.

Q. And the matter had been the subject-matter of conversation between you and Mrs. Hanbury?

A. We had not talked much. I was investigating aside from that.

584 Q. Is that all the hostile feelings, if any, or ill feelings you entertained then?

A. I did not entertain any. I never entertained really an ill feeling. I knew I was wronged, but could not help myself.

Q. Mr. Knowlton had nothing to do with any of these suits or any difficulty between you and Mrs. Hanbury?

A. I never spoke to him about my suits and he knew nothing about this business. I never told anybody about it, I was so ashamed of my bargain.

Q. Why did Mr. Collins tell you you ought not to pay that note?

Objected to.

Q. Did he say why you ought not to pay that note?

A. Yes.

Q. What did he say in regard to it?

A. He said there was $500 worth taken from that house after I went and looked at it, and everything was to be bought from the time I took possession. That is what he said.

OLIVE A. MARTIN.

Mr. HILL: I offer in evidence this certificate of M. W. Ryan, clerk, showing the State, city, and county taxes for '82 are not paid on the Winthrop Place property in controversy in this suit.

Counsel for defendants objects to the introduction of the certificate, because the county clerk of Cook county is not authorized by law to give any such certificate, and also because the tax sales purporting to be mentioned therein are not shown of record in

585 the county clerk's office, and also because it is part of complainant's original case, and, strictly speaking, is not rebuttal of any testimony taken by defendants, and it was the duty of the complainant's trustee, the defendant Knowlton, to have paid the

taxes therein mentioned under the terms of his deed to defendant Hanbury.

(Endorsed:) Filed Jan'y 14, 1884. W. H. Bradley, cl'k.

586 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

EMILY HOYT, Complainant,
vs.
MINER KNOWLTON, ANNA HANBURY, and LYMAN BAIRD.

Pursuant to notice and under the commission *issued* by the clerk of this court issued to Elij-h B. Sherman, special commissioner to take the testimony in writing of Miner N. Knowlton, *de bene ésse*, comes the complainant, Emily Hoyt, by Edward J. Hill, her solicitor, and the defendant, Miner N. Knowlton, in person and by B. M. Munn, his solicitor, and the defendant, Anna Hanbury, subject to the objection hereinafter made by M. A. Rorke & Son.

The witness, MINER N. KNOWLTON, having been duly sworn, deposes and says:

The defendant, Anna Hanbury, appears for the purpose of objecting to the taking of the testimony, *de bene esse*, under the commission issued to E. B. Sherman by the clerk of the circuit
587 court of the northern district of Illinois, upon the ground that the affidavit of Edward J. Hill and Miner N. Knowlton, filed February 26th, and upon which the commission issued, are insufficient to authorize the commission, and also upon the ground that the notice given by the master is not a reasonable notice, and upon the further ground that it is proposed to examine the witness named in the commission upon oral interrogatories instead of in writing.

The defendant, Anna Hanbury, desires to preserve all objections in matters of form or substance which may be taken to the commission or the notice given by the special commission, and counsel for Anna Hanbury, without waiving the objections, desired the privilege of cross-examining Knowlton.

Counsel for complainant hereby notifies the respective counsel for the defendants that he desires the evidence to be introduced in the cause to be taken orally, according to the custom and practice of this honorable court.

588 Q. What is your name, age, residence and occupation?

A. Miner N. Knowlton; age, about 50; reside at 394 South Clark St., Chicago, and am a carpenter by occupation.

Q. Are you one of the defendants in this suit?

A. I believe so.

Q. Do you know the defendant, Anna Hanbury; and, if so, when and where did you become acquainted with her?

A. Yes, sir; I became acquainted with her about the 28th of June last, in the city of Chicago, at the drug store of Buck & Raynor, at the corner of State and Madison Sts.

Q. State how you came to meet her there.

(Objected to as immaterial.)

A. I saw an advertisement in a Sunday paper—the Sunday Tribune of June 25th—concerning a loan, and I answered that advertisement and got a reply to it in the shape of a letter.

Q. Have you that letter?

A. Yes, sir.

Q. Will you please produce it?

(Witness does so.)

Counsel for complainant offer in evidence the letter pro-
589 duced by the witness, which is in the words and figures as follows, to wit:

"JUNE 26TH, 1882.

M. N. Knowlton, Esq.:

Yours of this date is before me. The diamonds I spoke of are now in a safe at the West Side.

A friend who holds them at present loaned me $300 last winter. He is in need of the money at the present time; consequently I am desirous that some honorable gentleman will be kind enough to loan the amount on reasonable interest.

If you will meet me at the corner of Madison and State Sts. tomorrow evening at half past seven o'clock, and accompany me to 68 West Madison St., I will let you see the diamonds. I firmly believe you will be satisfied with the security.

My time is fully occupied during the day-time, or I should be pleased to meet you at some other hour. I am very sensitive in regard to this loan, and I do not care for any to know that I am constrained to take this course.

If the hour mentioned will not be consistent with your
590 pleasure, please write me during the day at 281 Michigan Ave.

Yours very respectively, MRS. A. HANBURY,
281 *Michigan Ave., City.*

P. S.—I will enter Buck & Raynor's drug store before taking the car, and I will be dressed in black silk and moiré and a bonnet made of beaver, and if you desire you are at liberty to address me by presenting your card, so as to avoid mistakes.

A. H."

(Counsel for Anna Hanbury objects to the letter as being immaterial to the issues in this case.)

Q. In whose writing is that letter?

A. Mrs. Anna Hanbury's.

Q. Are you acquainted with her handwriting?

A. I am.

Q. What took place between you and her after that?

A. I met her at the time and place stated in that letter, on Wednes-

day evening, about the hour mentioned. I think the time stated in the letter was a day or so before; but I met her on the 28th.

Q. Did you learn her name?

A. Yes. I went with her that evening to Simon Strauss'
591 store, at 58 or 60 West Madison St., and saw her diamonds, upon which she wished the loan.

Q. Well, go on and state what you did, and whether you loaned her the money.

(Counsel for defendant, Anna Hanbury, objects to any letters not relating to any controversy in this suit.)

A. I made a loan the next day. I loaned her $400 on the diamonds for two months—I think it was for two months.

Q. When next did you see her after that?

A. On or about the 9th of August. I was passing—(Counsel for Anna Hanbury objects to the witness refreshing his memory from a memorandum kept in the hollow of his hand, it not being explained). She knocked on the window, and I looked up and saw that it was her, at 281 Michigan avenue, where she then resided. I started to go up the steps and she met me at the door. She said she wished to see me.

Q. What took place? State what she said and what you said at that interview.

592 A. She said she knew that her interest on the diamonds, which was payable monthly, was due, and that I ought to have it, but that she did not have the money to pay me, and that Mr. Shrouds, who owned the furniture in the house on monthly payments, had sent his collector for the monthly payment, and she could not pay it, and that she had sent word to him that he might come and take away the furniture. She said she did not know what to do; that she could not meet her payments, and wished some money to buy things for her children to fit them for school, about the first of September. She desired me to loan her another hundred dollars, and she told me that she had some valuable lots situated in Boston, and that she must raise the money on them or sell them to help her out, or she would have to sell out her house and home. She said that the amount invested in these lots was about $20,000, and
was the last of a fortune that had been left to her, and had
593 been spent by her husband, of over $100,000; that the lots were her nest-egg, and she had intended to keep them, but now these would have to go. I declined to let her have the $100 asked for. She followed me to the door and asked me to think it over, and perhaps I would change my mind and let her have the money. She spoke about if I would let her have the money she would either sell or negotiate a loan on her Boston property, and would very soon pay me back again; that it would accommodate her very much if I would let her have it just then. I think there was considerable more talk and conversation. She spoke of her loss, but I do not recollect exactly what it was.

Q. When did you see her again?

A. On thinking the matter over I called there again the next day——

Counsel for the defendant, Anna Hanbury, objects to the witness refreshing his memory from the same paper which he laid down from the time of the last objection, and which paper has not been explained by the witness.

594 Counsel for Knowlton insists that the witness has a right to refresh his memory from any memorandum.

Q. Do you remember these days, irrespective of any memorandum which you have in your possession?

A. I do.

Q. You are testifying from your own recollection, irrespective of any memorandum?

A. I am. The only reason why I had this memorandum is because it covers considerable time, and I made it up from scraps to refresh my memory.

Q. You called the next day?

A. Yes.

Q. What took place when you saw her on that occasion?

A. I told her that I was sorry for her, and would endeavor to assist her in paying back the money she had gotten, and she asked me if I could assist her in getting a loan on the Boston property or in selling it, and I told her that I would endeavor to do so. So we talked about the property, and she showed me the deeds of conveyance to her and described the property, and told me that the lots were very desirable, and were situated within a block of the

595 station of Clarendon Hills.

Q. Did she give you the deeds?

A. Yes.

Q. Have you those deeds now?

A. No, sir; I have not.

Q. Where are they?

A. I gave them to Mrs. Hanbury.

Q. Where did you last see them?

A. I last saw them at Mr. Rorke's office.

Counsel for complainant hereby notifies Andrew M. Rorke, of the counsel for the defendant, Anna Hanbury, to produce for the purpose of this examination a certain deed, dated May 5th, 1873, from Charles J. Paige and James H. Paige to Harvey A. Whitney and George O. Whitney; also the original deed, dated July 24th, 1876, from Harvey A. Whitney and George O. Whitney to Anna Hanbury, each of said deeds conveying certain property therein described as situated in that part of Boston, in the county of Suffolk, Commonwealth of Mass., called Clarendon Hills.

596 Counsel for the defendant, Anna Hanbury, in response to the notice given by counsel, hereby remains mute, and neither admits or denies having the deeds, and if he had would decline to produce them for want of a reasonable notice.

Q. What are these papers which I now hand you?

A. I think they are copies of the deeds which she gave me.
Q. At what time?
A. On August 10th, 1882, I think it was, if I remember correctly, but I am very poor at remembering dates.

Counsel for complainant offers in evidence as Exhibits "1" and "2" in connection with the testimony of the witness.

Q. These Exhibits "1" and "2," as I understand you, are copies of the deeds which she gave you on the 10th of August, 1882, at 281 Michigan avenue?
A. Yes, sir; I think so.
Q. Please examine and state whether they are true copies or not.
A. I think they are true copies.

Counsel for defendant, Anna Hanbury, objects to secondary evidence as to the contents of the deeds without first having shown
597 that the originals are recorded and whether or not certified copies could be obtained.

Q. What further took place after she gave you those deeds?
A. She desired me to assist her in negotiating a loan on the Boston property or selling it.
Q. When you speak of the Boston property what property do you refer to?
A. Those deeds describes the property which I refer to. There are 27 lots.
Q. For what purpose was she giving you those deeds?
A. So that I could write and ascertain what I could do towards assisting her in obtaining a loan on the property described.
Q. What else took place at that interview?
A. She gave me a description of the lots. She said they were situated on the Providence R. R., close to the depot and within one block of the station, and that the street ran directly up to the lots, and that it was within two or three minutes' walk from the station. She described the lots as being high and dry and very desirable. She said that the direction was west and a little south from
598 Boston and frequent trains ran out there, and it was built up around there, and that these lots would be needed very soon for building lots, and that she hated to dispose of them. She said their value would be greatly enhanced very soon for their desirable location to build upon, and that if she could obtain a loan she would rather not sell them, but would have to dispose of them in some way. I don't think that is all she said. She very particularly described them, and she showed me the original deeds and said that that was the amount that they had cost, and the amount of consideration described in those deeds was about $20,000.
Q. What did you do with the deeds?
A. Put them in my pocket and carried them away.
Q. For what purpose?

(Objected to as improper.)

A. I promised to write to Boston for her and aid her in getting money on them by selling or mortgaging.

599 Counsel for Anna Hanbury objects to the witness stating his purpose.

Q. State whether you wrote to Boston; and, if so, state when and to whom.

A. I wrote within one or two days after that (witness examining his memorandum already referred to).

Counsel for defendant Knowlton insists that the witness has a right to refresh his memory from any memorandum he has as to dates for the purpose of ascertaining the dates.

Counsel for defendant, Anna Hanbury, objects to the witness refreshing his memory from any memorandum, and particularly the one referred to, unless the same is explained.

(The witness, continuing, said:) I wrote to S. R. Knight & Co. and also R. Heber, of Boston.

Q. State whether you received any answer.

A. I received answers to these two letters.

Q. Have you got the answers; and, if so, produce them.

A. Yes, sir; I have them. These are the two letters.

600 Counsel for defendant, Anna Hanbury, objects to the introduction of the letters on the ground that there has been an evident spoilation of the letters in other handwriting.

BOSTON, *August* 18*th*, 1882.

Mr. Knowlton.

DEAR SIR: In reply to your letter as to the value of the property in Clarendon Hills, West Roxbury, Boston, Mass., I would say at the present time there is no market value. The assessed value is about $100 per lot. I have no knowledge of a sale in the neighborhood. I should not care to undertake to negotiate a mortgage on the property, the value is so uncertain. I do not consider the property good selling property, and no one can guess or estimate the value of undesirable property. With no prospects of improvement in the future, which seems to be about the condition of this property, I should not advise an effort to sell at auction.

Very truly yours, SAMUEL R. KNIGHT.

601 Counsel for defendant, Anna Hanbury, objects to the introduction of a copy of the letters unless the original letter is returned by the master as an exhibit.

Counsel for complainant offers the original letter in evidence, which will be produced at the hearing in this cause and which is now marked Exhibit "3."

Counsel for complainant produces the other letter, which is in the words and figures following, to wit:

"BOSTON, *August* 18, 1882.

M. H. Knowlton, Esq.

DEAR SIR: Your favor of the 12th came to hand, and I have delayed answering the same until I could give some information in regard to the lots. They are or will be quite desirable another

year, as the Providence R. R. is to commence to run cheap trains on their road and will give passes to builders for three years. The lots would not sell this year at a forced sale to advantage.
602 Another year they might.

Loans on vacant lands are not easily placed, but they are good security if you could get a person who has confidence in land mortgages.

Yours respectfully, R. HEBER."

And the same is marked Exhibit No. "4."

Counsel for the defendant, Anna Hanbury, makes the same objection to this letter that he did to the former letter.

Q. After getting the letters from Boston about what time did you receive them?

A. About the 21st of August.

Q. What did you do with the letters?

A. I called and showed them to Mrs. Hanbury, and she read them over. She said that these letters seemed to show that the men did not know anything about the lots; that she had been all over the lots and drove around there with her phaeton, and knew all about it; that these men that lived in Boston did not seem to know anything about it; that one of the — writing did not pretend to
603 know and had asked somebody else. I told her that the letters seemed to be very unfavorable, and she talked a good deal about the letters, and tried to explain them away. She would not make any sale or disposition of the property on such letters, and she had deeds to show that she had paid about $20,000 for that property, and what was said before towards raising a loan or trading to me the property could not be affected by such letters.

Counsel for defendant, Anna Hanbury, objects to all the evidence thus far taken, on the ground that it is not so far shown that these transaction- were, at the time of the making of the contract of exchange or at the time of the consummation of the trade and the execution of the deeds, described in the bill, and, further, that these transactions are too remote, being long prior to the contract in question.

(The witness, continuing, said:)

There had been conversations before, about the time I wrote the letters to Boston on the 12th, in which she said she would
604 like to make an exchange with me for Chicago property for which she could get some income. I told her I thought that it would be very desirable for her, in present situation, to do so, and that if everything was satisfactory perhaps we could make an exchange. She said she desired very much to do so, and that it would help her out of her present difficulties, and that she supposed she must make a sacrifice on the property. This conversation was about the time of writing the letters to Boston. At the time of the receipt of these letters, when I showed them to her and she had read them, and the letters were so unfavorable, we ended all the talk; that

ended all the talk. She then said she would not trade on these letters, and I said they were entirely unsatisfactory. At this time, after the letters were received, I said I did not think she could get a loan on the lots in Boston, and there the matter dropped.

Q. When did you next see her?

605 A. I called upon her on the 4th of September, I think it was, to see if she had the money to pay me which was due me, and she said she had not, and that she had been trying to do something, and had caused Mr. Reid, a real estate agent, to advertise her house for sale at 281 Michigan avenue, and that he had advertised it in the Sunday paper, and called my attention to it, which was on August 27th, 1882.

Counsel for complainant offers in evidence the advertisement appearing in the Sunday Tribune of August 27th, in the words and figures as follows:

"For sale by F. J. Reid, 27 Reaper block, without regard to cost, a 30-room furnished house on Michigan avenue. Rent only $100; lease worth $2,500. No better opportunity has ever been offered for boarding business."

Counsel for defendant, Anna Hanbury, objects to the notice because the original printed slip is not annexed to the deposition of the witness; and, further, that it is immaterial in this case.

606 (The witness, continuing, said:) She said then, "I don't like to sell my house out if I could possibly avoid it. I wish to make this exchange with you, and then I will not have to sell out the house." She got out the plat of the lots spoken of in the deeds. This is the plat of the lots spoken of in the deeds.

Counsel for complainant offers in evidence the plat referred to by the witness, and the same is marked Exhibit No. "5," and purports to be a plat of certain land of C. J. and J. H. Paige, in Clarendon Hills, drawn on a scale of 40 feet to the inch, by E. W. Herrick, C. E., Boston, May 22, 1872.

Counsel for defendant, Anna Hanbury, objects to the introduction of the plat generally and further unless it is attached to the deposition.

(The witness, continuing, said:) She brought this plat out on the table and showed me the lands marked on the plat "Mrs. H." or "H.," as being her lots; that these were nice streets (referring to the plat) and nice lands, and the whole was beautifully situated,

607 with Poplar street on the south, as shown by the plat, and Beech street on the west. She said that Poplar street, on the south, was a nice street and ran directly to the depot on the Providence R. R.; that this station was within one short block, or two or three minutes' walk; that this would all be built right up within a short time, and that from its being so close to the depot it would be a nice place for me to build houses upon, because I was a carpenter and builder. She said a good deal more, which I cannot repeat. She said this land was west of Boston, and that the Providence depot was

just at the end of this, Poplar street, and that it was a beautiful walk, and was a nice street, laid out to the depot.

Q. What was said about the railroad being in the vicinity?

A. She showed that the depot was on the north side of the track, and that the distance straight up to this land from the depot was one block. She said this fast train to the builders would greatly enhance this property in value, owing to its location, and bring
608 it into market. She also said at that time that it was foolishness for these men to say what they did about the property being of so little value, and said, "It cost me 10 cents a foot, and I bought it very cheap, and all my friends congratulated me upon the nice bargain I had made. There are my deeds and you can see for yourself, and the other deed, before I bought it, shows you that it was worth just as much then as at this time, which is nearly 10 years ago, and it is worth much more now, but I need the money and I must dispose of it at a sacrifice, and I would rather you would have it, for I cannot manage such business. There is a small mortgage of $800 on the lots, and that makes it look very bad to get a loan on, although it is nothing to speak of." I told her that the mortgage would have to be paid off and increase the encumbrance in the new mortgage, if it could be done. This talk was very much a repetition of what had been talked about on the 21st, when I
609 called with these letters, but some was added. Then she desired me to take her statements and said she did not know anything about who wrote those letters, and that she wanted to make a trade with me; that it would help her out and I would make a good deal of money by the trade. I said I did not want to lose anything by the trade, and that I liked to make a good trade, but that I didn't know anything about this matter. She then said, "You can take my statements; I never say anything but that it is so; you will find that property better than I tell you it is." I said that I would rather wait and go down and see the property or write more concerning it. She then said, "I have advertised my house, and she called my attention to the advertisement, and said that she could not wait, because Mr. Reid, the agent, had been there to show the house to several people; and she said further, "I think one of them will buy the house and — I wait I will
610 lose the opportunity. I wish you would take my statement of the matter, and you will find it just as I tell you, for I am the one that will lose by the transaction. I would not exchange this property, that cost me 10 cents a foot, for your house, and make such a sacrifice, unless it was to get that income, so that then I could keep my house and home and get along. I know I am making a great sacrifice, but some one must have it, and I cannot keep it longer if I can dispose of it." I said I never *I never* liked to take property without seeing it, but I will take your map—meaning the plat—and the papers and look it over. I told her at that time, after being so much urged, that I would take the papers and let her know. There was a great deal more talk, but this is about what it was. I think some of this conversation was on the 5th. In that conversation I — her the question, "You tell me that you

have paid 10 cents a foot, or about $20,000, and your deeds
611 show it. Did you take that property in exchange or under a mortgage or some other way?" Her answer was, "Nothing of the kind; it was cash, and my friends advised me to do so to save it, so it would not be spent, as my other money had been."

Q. When did you next see Mrs. Hanbury?

A. On the 7th day of September, two days after this conversation spoken of, when I took the deeds.

Q. State what you said and what she said then.

A. I told her I had carefully examined the plat and counted up the size of the lots and figured the number of square feet in the lots, and that the amount paid was apparently correct; that the amount of 10 cents per foot, which she stated was the price paid, seemed to be not far from right, so far as I could see. She said it was, and everything was correct, just as she had stated it, and she desired me to rely upon her statement. I said, in answer to that, that I thought I would make the exchange, but that I did so entirely upon what she had shown me and represented to me,
612 and that it was unusual for me to make a trade of this kind without seeing the property, but I believed her statements, and I would take them and make the exchange. She asked how soon we could do so, and I said that I could make out the paper and that we could sign it. She said, "I would not like to do that way, but would like to have my attorney make out the papers." I said that it did not make much difference—only the expenses, which might be charged to her. Her answer was, I will pay the expenses and it won't cost you anything. The agreement was that we were to go to Rorke & Son's office the next day and have the agreement reduced to writing. I told her I would make out the memorandum of it, which I did and took to Rorke's office, and they made out the agreement.

Q. What next?

A. The agreement was made out, and this is a copy made out by Mr. Rorke.

Q. It was reduced to writing?

A. Yes.

Q. By whom?

613 A. Rorke.

Q. When did you see her again?

A. On the 8th, the next morning, at their office.

Q. What did you do when you got there?

A. I did not say much; but she told Rorke what she wanted done; that we wanted an agreement made out, and I showed Mr. Rorke, Sr., the memorandum of the agreement we were to have, and he asked me for some of the deeds to show that the property was mine.

By Mr. RORKE:

Q. What property?

A. The Winthrop Place property. I had this piece of paper and said this was the substance of what the agreement was to be. At

first I may say that Mrs. Hanbury did the talking, and said what we wanted, and Rorke asked me to see my deeds, and I showed him what I had—the two or three deeds I had—and he asked me to go and get some of the deeds. I don't know where they were, but any rate I showed sufficient abstracts or papers or deeds, so that it seemed to be satisfactory to him.

614 Q. Did Mr. Rorke draw the agreement in two parts?

A. Yes.

Q. And that is a copy which you have?

A. Yes; I think so.

Counsel for complainant offers the agreement in evidence as Exhibit No. "6."

Counsel for the defendant, Anna Hanbury, objects to the deeds generally.

Q. That is the agreement which you made upon that occasion?

A. It is.

Q. It was made in counterpart?

A. Yes.

Q. What next did you do towards carrying out the agreement?

A. Commenced to get abstracts made out, and on the 26th of the same month I stopped and left the abstract at Rorke's office.

Q. What did she do?

A. She got an abstract from Boston.

Q. Did you get any notice from her in reference to it?

A. Yes; I got notice to call and see it.

Q. When did you meet to carry out the agreement?

A. On the 28th of September.

Q. What did you do and what did she do?

615 A. We made regular deeds of transfer and signed them.

Q. What deeds did you make?

A. I signed deeds in two parts—two separate instruments.

Q. You made, acknowledged, and delivered them to Mrs. Hanbury, did you?

A. Yes, sir.

Counsel for complainant now notifies counsel for Mrs. Hanbury to produce the original deed made under this agreement, dated September 28th, for the purpose of this examination, and that, if the deed is not produced, *that* copies will be introduced.

Counsel for the defendant, Anna Hanbury, has not been notified to produce the deeds called for, and declines to state whether or not they are in his possession, custody, or control, except that they are not in the possession of the counsel now examining the witness, and further objects to the production of any copies unless they be certified copies of the deeds called for, they having been both recorded in Cook county, Illinois, on the 28th of September, 1882.

616 Counsel for complainant now offers in evidence copies of the deeds, subject to the objection, and makes the same Exhibits "7" and "8."

Q. State that part of the transaction that occurred on the 28th of September.

A. This warranty deed of Anna Hanbury, made to me, of her lots in Boston were made under that agreement.

Counsel for complainant offers the last-named deed in evidence, subject to objections, as Exhibit No. "9."

(Objected to generally.)

Q. What else has she done towards carrying out that agreement since then?

A. I don't know that she has done anything, except that she took possession of the property. After we signed the papers *the papers* each took our deeds.

Q. What was done — these Boston deeds?

A. They were left at the office of Mr. Rorke or kept in the custody of Mrs. Hanbury; I don't know which. I afterwards asked her for this Paige deed and the Whiting deed to the lots in
617 Boston, and she said I would have to have them, and she would get them for me, but I never got them. I wrote her for them once, but have never received them since that time.

Q. Did you get any answer to that letter?

A. Yes, sir.

Q. I notice in the agreement and in the deeds of yourself to Mrs. Hanbury under that agreement certain property being described as being situated upon Winthrop Place, in the city of Chicago; what numbers were they?

A. The street numbers were 18, 20, and 22 Winthrop Place.

Q. How many feet front is there in number 18?

A. 25 feet front and 20 front upon the other two. The rental was $110 per month.

Q. Was that the rental of that property when the property was transferred?

A. Yes; that was about the re-tal then, and it is the same now. I might say under that agreement she was to pay up the back interest. There was an encumbrance on No. 22 of $1,800 and some back
618 interest which she was to pay up to the first of October.

Q. Has she paid that interest or that incumbrance?

A. I don't think so.

Q. Do you know who owned that incumbrance at that time?

A. Yes; Emily Hoyt, the complainant.

Q. Did you ever own that incumbrance?

(Objected to.)

A. I never did or pretend to own it to any person. I don't think it was at the office, but it was understood between Mrs. Hanbury and myself, for we had talked it over before we went to the office to execute the deed on the 28th of September. I stated to her that the back interest would have to be paid up to October first, and that I thought I could get the interest reduced from what it was then drawing (9 per cent.) to eight per cent. and have her interest start from the date of the first of October. I did not make this arrange-

ment in any positive manner, but I told her that I thought it could be done when the interest was all paid up to October first. At Rorke's office she said we had made an agreement, and it is
619 correct, to make these papers in that manner, and a blank was left by the attorney drafting the papers to be afterwards filled up.

All the foregoing evidence is objected to by counsel for defendant, Anna Hanbury, as irresponsive to question and immaterial to the issues.

(The witness, continuing, said:) There were agreements concerning $200 also made concerning these Boston lots.

Q. How long after getting the deed for the Boston lots was it before you visited Boston, if you went there?

A. I left here and went there on the 3rd of October.

Q. When did you get to Boston?

A. A few days afterwards; the 5th, I think, in the evening; that was Thursday, October 5th.

Q. What did you do after you got there concerning the Boston property?

A. I undertook to carry out the agreement that I had made with Mrs. Hanbury, as specified in the writing.

Q. Didn't you go and look at these lots?

620 A. No; not then. I undertook to carry out the agreement concerning the $200. The $1,000 that was agreed to be paid in Boston consisted of a mortgage of $800 which stood against the lots, and then $200 which I was to pay in addition. This was not specified in the agreement in detail, but there was an attachment suit which was to be settled and which was a lien on the lots in favor of Mark Blaisdell.

Q. What did you do, and who did you go to see?

A. By direction of Mrs. Hanbury I called upon her attorney, at 27 Park Row, a Mr. A. C. Cottrell. I was to pay $200 to him, which was to clear the property of the Blaisdell attachment. Next I was to pay the taxes for the past year, and if any portion of the $200 remained her attorney was to keep it for his fees for business he had done a year or two before that.

Q. That was the understanding between you?

A. Yes; that was the understanding, and I called and paid to Cottrell the first $100.

Q. Have you got a receipt for that?

A. Yes, sir; here it is.

621 Counsel for complainant offers the receipt in evidence, which is in the words and figures following, to wit:

"BOSTON, *October 6th*, 1882.

Received of Mr. Knowlton one hundred dollars ($100) on account of agreement with Mrs. Hanbury.

ASA COTTRELL."

Objected to as immaterial to the issues in this case by counsel for Mrs. Hanbury.

(That the witness, continuing, said:) That money was to pay the Blaisdell attachment. Another point came in there. Mr. Cottrell informed me that he was to keep the rest of the money to pay his bill, instead of paying the taxes, as the agreement was between myself and Mrs Hanbury. He claimed that he had letters from her, in which she said his bill was to be paid before the taxes. There was also some back interest that she had agreed to pay, and I wrote her a letter from Boston concerning this matter.

Q. Have you a copy of that letter?
A. Yes, sir.
Q. Where did you get that copy?
A. Out of my files of papers.

Q. You wrote her this letter, did you?
622 A. Yes.

Counsel for complainant introduces the copy of the letter as Exhibit No. "10."

Counsel for Anna Hanbury objects on the ground that no foundation has been laid for it.

Q. That letter will explain the whole thing, will it?
A. Yes.
Q. Did you get an answer?
A. Yes.
Q. To this letter?
A. Yes.

Counsel for complainant offers the letter in evidence.

Q. What deeds are referred to in that letter?
A. It was in reference to deeds on the Boston lots from Paige to Whiting and Whiting to her.

Counsel for defendant, Anna Hanbury, objects to all matters of evidence after the 28th of September—after the exchange of deeds. The letter is offered in evidence as Exhibit No. "11."

(Objected to by counsel for Hanbury as improper and irrelevant and incompetent.)

Q. What further did you do?
623 A. I called upon A. J. Bramford, who was Mrs. Hanbury's real estate agent or the person who had charge of the lots which I had a deed to.

Q. What did you and Bramford do?
A. I called upon him at her request. She gave me a letter of introduction to him, and I spoke to him concerning the mortgage, which he had control of, upon these lots, and was about to pay it off.

Q. How long was it after you got to Boston before you saw the lands described in these deeds, and who showed them to you?
A. Bamford told me if I would wait until Saturday afternoon, after business, he would take his trotter and show me the lots. I waited until Saturday afternoon and went out with him and drove

round there late in the afternoon. He showed me some of the new buildings and points of interest. We took in the town considerably, and 'long towards the afternoon we reached the vicinity
624 of Clarendon Hill, and he showed me where the depot was—the Clarendon Hills depot—and then we turned round and drove in quite a circle across the track of the Providence railroad and drove to where he showed me the lots described in the deed. These lots seemed to be acre property and not in streets, as it appeared on paper.

Q. Did you go out and look at them?

A. It was in the afternoon, late, and we stopped a few moments and looked out of the covered buggy and then turned round, and the trotter seemed to know that he was headed for Boston and made a pretty lively gait back. The lamp-lighters were round about that time.

Q. This was Saturday night; what did you do on Sunday?

A. On Monday I wrote a letter to Mrs. Hanbury. I was considerably occupied about that time.

Q. What did you do on Tuesday?

A. I was making inquiries concerning the property and talking with people concerning it.

Q. When next did you see the property after this writing?

A. I next saw it on Wednesday or Thursday, and I think it
625 was on Thursday.

Q. What did you do then?

A. When I got off of the cars I found the station-house was on the other side of the track, instead of being towards the lots. I was surprised to find it on a different side from where she had described it. I was going to go that way—that is, the direction she had described the lots as lying—and I found no crossing there and no street crossing the railroad track at that place, and that there was a post fence to keep the people from going on the track. I crossed over the track and through the fence and found a low and little board shanty there at that point. I walked along in the direction in which she had described the lots to me and found the ground all low and all covered with alders and willows and scrub brush, and entirely unfit for anybody to think of building a house or even travel on. There is a small path running through there, and in about five minutes I passed out into that place. The ground seemed to be
626 about all the same as before, filled with alders and willows, and the leaves were on the trees. I could not see any house or any people around there anywhere, and did not know what to make of it. I got out the plat which I had in my pocket—I had known from that where the lots were, on the corner of Beech and Poplar street—and went back to the station to inquire where Poplar and Beech streets were; that that corner was about a half a mile from there, in a northerly direction. They pointed me out the direction to take, which was up through this place that I had travelled before. I was directed to follow that path until I came to a street running straight across it, which they said was Poplar street; so I went there and found Beech and Poplar streets, and I recognized it

as the place which Bamford had showed me Saturday evening. When I got to the place I knew it.

Q. How far is that from the depot?

A. One way you had to go from the alleged depot was to
627 drive about a mile and cross the railroad track away east of the station; but there was no public street that you could drive from the depot on, and *this* not to-day. The only street you can reach is to drive away round to the crossing of the railroad, and that fence is there now. I left and didn't talk any more of it. I got back to Boston and left there.

Q. Did you make any inquiries as to the value of this property?

(Objected to on the ground that the defendant, Anna Hanbury, had no connection with these inquiries and generally as immaterial.)

A. Yes; I did; I made many inquiries concerning it.

Q. From whom?

A. From various real estate agents in Boston that were interested in and knew property in that vicinity and many others not interested at all.

Q. What did you find out?

A. I found it was meadow land. It was acre property. I found it all enclosed in one field—enclosed as a meadow. There
628 were indications that the ground had been plowed.

Objected to as immaterial, and the answer objected to unless the witness gives the names of the parties.

Q. How about improvements around there?

A. As far as the meadow portion of the land, it all laid very well, but some was rather low and was simply good for meadow land. There were some houses around there.

Q. How many and where?

A. There were two or three houses west of that, on the west side of Beech street, and there were houses towards Boston.

Q. How many houses did you see?

A. Well, I could not count them. There were a good many right out west from Boston—the nearer you went the more houses. If it had been where she showed me it would have been all right enough and good enough too, but it was not where she showed me at all. I also found out that the representations that she had made
629 about paying cash for the property was entirely false, and the fact was that she had paid no cash for it at all; that the consideration that was first given to Paige was an exchange, in which he realized very little for the lots.

Q. You didn't find the property at the depot, but half a mile away?

A. Yes, and the depot on the other side of the track, and no street leading direct to the depot.

Q. Was that property worth any more than the encumbrance on it?

Objected to on the ground that the witness does not show where he got his information.

A. I saw that I had got wholly deceived.
Q. Where did you go then?
A. I took the cars and went to Boston.
Q. How long after that before you went to Chicago?
A. I left the same night and had business in New York, and stopped there, and, I think, I got here on the 27th of October, which was Friday.
Q. What did you do the next day?
A. I called upon Mr. Rorke.
Q. Which Rorke?
A. The father of the gentleman present. I didn't see this one, I think.

630 Q. State the object of your interview with him.

A. My object in calling there was to get possession of the abstracts connected with that trust deed. It was not much of an interview. He asked if I had seen the madam or lady, and I told him no, and then he asked me how I liked the Boston lots. I told him that I didn't want to have anything to do with it at all, and he said, "I am not to blame at all;" and then I called upon Mr. Munn to see what action I should take in the matter. This was on the 28th.

Q. How long after you got back before you filed the bill to set aside the deed on account of fraud?
A. The injunction was on November 3rd, which was the *the* day I filed it.
Q. Mrs. Hanbury filed a bill against you, has she not?
A. Yes.
Q. She is not satisfied with the business, either?
A. No; she is not satisfied.
Q. This Winthrop Place property which you transferred to her on the 28th, the numbers being 18, 20, and 22 Winthrop

631 Place, from whom did you purchase these, respectively?

A. The vacant lot I bought of, I think, C. B. Wilson, which was lot 18.

Q. What did you give for that vacant lot?
A. I paid off a trust deed, amounting to $600, and made him a trade of a set of furniture besides.
Q. What did that cost?
A. The lot cost me $600. I paid the trust deed.
Q. Whose money did you pay for that property?
A. Mrs. Hoyt's.
Q. Was it money you held as her agent?

Objected to generally.

A. Yes.
Q. Did you improve that and put up a brick building; and, if so, whose money did you put in the building?
A. Yes; I put a brick dwelling and barn on the property. The

house is a dwelling-house with three flats, and cost near about $3,500 for material and labor.

Q. Whose money paid for that?

A. Mrs. Hoyt's money was invested in that and the other building.

Q. From whom did you get No. 20?

632 A. That I bought from Mr. C. S. Shields. The equity cost me about $450, and it had a trust deed on it, which I bought with Mrs. Hoyt's money, which amounted to $1,840. No. 22, adjoining, I purchased from the same party and gave $700 for the equity, subject to a trust deed for $1,800. I subsequently purchased for Mrs. Hoyt, with her money, the trust deed upon No. 22. I took the title to that property in my name. I was the agent for Mrs. Hoyt and her attorney-in-fact, and I had charge of other property located at 392 and 394 South Clark St. (Counsel for defendant, Anna Hanbury, objects to the testimony as to his being attorney-in-fact.) I collected from that property belonging to her as rents this money.

Q. You have accounted, have you not, under a decree before this court?

A. Yes, sir.

Counsel for Anna Hanbury objects to the witness being asked as to the accounting on the ground that his client is not bound by it.

Q. Have you read over that examination on that accounting?

633 A. Yes, sir, except what was taken the last day.

Q. Was that examination under oath?

A. Yes.

Q. What you have read of that examination as it has come from the type-writer state whether it is true.

A. That is true; it contains all the facts in the matter between me and Mrs. Hoyt.

Counsel for the complainant now offers as part of the examination of the witness, M. N. Knowlton, and as explanatory of his answer, the testimony of said M. N. Knowlton taken before E. B. Sherman, a master in chancery of this court, under an order entered in this cause of the date of February 23rd, 1883, and makes the same Exhibit No. "12," and makes the same a part of this examination the same as if repeated herein again, together with all the exhibits attached.

Q. Is what *it* contained in this Exhibit No. "12" true, to the best of your knowledge?

A. Yes, sir.

Counsel for Anna Hanbury objects to the introduction
634 of this exhibit and any of the proceedings under the order of reference entered in this cause on the 22nd day of February, 1883, upon the ground *that* the saving clause therein ordered by Judge Blodgett and in his own handwriting, that "the proceedings under this decree shall not affect the defendants who have not answered."

And counsel for Anna Hanbury invokes the protection of that order in behalf of his client and objects to the testimony in this suit as to her and the others not answered, his appearance as detailed in that testimony being merely for the purpose of objecting.

Cross-examination by B. M. MUNN:

Q. Was any person present when you and Mrs. Hanbury talked in reference to an exchange of property?

A. No, sir.

Q. Where was the chief conversation?

A. In her front parlor, at 281 Michigan avenue.

Q. What did she say, if anything, as to the reason why you should give a speedy answer as to whether you would make an ex-
635 change of property?

A. That was about the 5th of September, that she desired me to take the property, and the reason she gave was that she had advertised her house. She represented to me that she expected a man to buy it and said she would tell them that she had changed her mind and would keep the property, and the rents of the property which she got would keep her from breaking up her home.

Q. When you speak of her house or home, as used by you in your examination-in-chief, do you mean property that she owned or rented, or do you mean personal property?

A. I mean that it was simply her home and under her control by a lease; that the house was a leased house, filled up with furniture owned by Mr. Strauss. He owned about everything in the house. She represented to me that she had nothing whatever in the house, except her wearing apparel and a few pictures. She said the property belonged to Strauss under a mortgage.

Q. Then her home on Michigan avenue is the one which
636 she talked of—which she desired to retain.

A. That was it exactly if she made a trade with me.

Q. What other reason did she give for making this exchange and getting the Winthrop Place property for the Clarendon Hills property?

A. Well, she could use the income and have money to educate the children; she had two or three children; but the great necessity was just at present to use as an income.

Q. The income from the West Side property was at that time what?

A. $110 per month. The Boston property was nothing and she had to pay the taxes.

Q. State if anything was said between her and yourself with regard to the taxes on the Boston property, and whether or not the taxes had been paid up.

A. She said they were all paid up to this year, and this agreement was that this $200 was to pay up all the back taxes on the property.

Q. While upon that point I will ask you if, when you went to Boston after the exchange, did you find any taxes against the prop-

erty or did you find any liens on the property for taxes, or did
637 you ascertain anything as to how they had been paid by her?

A. I ascertained definately about that. I learned that there was due on the lots for this year taxes amounting to about $40, and that for three years past the taxes had not been paid, but that she had by her personal application, as being a very poor widow and in destitute circumstances, had the taxes rebated, as the property was encumbered. She had paid no taxes for three years.

Q. How many of the parties, from your best recollection, did you consult among the real estate dealers as to the value of Clarendon Hills property while you were in Boston and at Clarendon Hills?

A. Well, I should think from 40 to 200.

Q. Did you make any particular data or memorandum as to the names of the parties of whom you inquired, about which you testified in your examination-in-chief?

A. I don't think I have; I may have the names of some of the parties; I think I have the names of quite a number of them.

Q. What, then, was the substance of the information you gathered from them as to the desirability and value of the Clarendon Hills property?

638 (Objected to as immaterial and improper.)

A. That it was very little in value; that the $1,000 encumbrance was about as much as it would sell for. After paying the $1,000 and the $500 for the diamonds it was all it was worth.

Counsel for Anna Hanbury objects to the answer of the witness and to the question of counsel for the reason that it is not yet shown from whom he derived his information or upon what he bases his information.

(The witness, continuing, said:) This woud make an encumbrance of $1,500, which was more than the property could be sold for.

Q. When this trade was made between you and Mrs. Hanbury, as shown by the deeds, was the trade *bona fide?*

A. It was fraudulent and false, and because of these representations I made the exchange——

(Objected to as irresponsive to the question.)

I believed them. I believed the representations were true.

Q. Did you tell her at the time that this money of Mrs.
639 Hoyt's went into this property which you deeded to her?

A. I don't think I ever mentioned the name of Mrs. Hoyt to Mrs. Hanbury.

Q. It was a fact, as you have stated in your examination-in-chief, that this was really Mrs. Hoyt's property—that is, her money was invested in this Winthrop Place property?

A. Yes.

Q. Then why did you trade with her to get the property at Clarendon Hills?

A. Well, I had charge of Mrs. Hoyt's property, and I supposed it

was a fair and even exchange, and that there would be nothing wrong in the matter. I never had any intention of wronging Mrs. Hoyt or Mrs. Hanbury.

Q. Was it your purpose to utilize the property there for Mrs. Hoyt's property here?

A. Yes; it would have been her property, just as much as this was.

Q. What was your idea if this had turned out as it was represented as to your utilizing it?

A. I could have disposed of it favorably if it had been located as Mrs. Hanbury represented to me. It would have been a
640 favorable change, I think.

Q. For what reason?

A. I think I could have handled it so as to make something out of it by building and disposing of the property in that way.

Q. Was anything said in that talk between you and Mrs. Hanbury, just before you consum-ated the trade, as to how you could use the property, you being a carpenter, and make money?

A. She said I could put up buildings and rent them there, and make a fine thing, for it was splendid property and it would enhance its value greatly. I didn't know at the time what I should do exactly—build houses or not.

Q. Did you find upon inquiry, when you visited Clarendon Hills, that the property was of such nature and character as to make it desirable to make improvements of that kind there?

A. I don't think a man with good sense would put up a house there.

Counsel for defendant Hanbury objects to any evidence touching any conveyance of the Winthrop Place property, because the
641 witness Knowlton has just sworn that he never mentioned the name of Mrs. Hoyt to Mrs. Hanbury.

Q. Did you find the property to be popular and desirable as a Boston suburb to invest money in?

A. No; it was not desirable at all. If a man wanted a country farm, or wanted to go into the country where he could buy land by the acre, then he could use this property.

Q. If the property had been found by you to be where Mrs. Hanbury represented it to you, how much more valuable would it have been than it is as you found it—further off and in a different direction?

A. It could not be located where she told me it was, for it was too low ground there.

Q. Then you found the facts as to the location of the property to be different from her representation?

A. It was entirely in a different place.

Q. You also found it different from her representation as to desirability and value?

A. I found the value in the deed was a mere trading value, and not cash value.

Q. Do you distinctly recollect that at the time just before
642 the time you exchanged the property with Mrs. Hanbury, that she stated to you distinctly that she purchased this property for $20,000, or thereabouts, for cash?

A. She stated that positively.

Q. How did you find it in that respect, upon inquiry and examination, as to that property?

A. I ascertained that since then that the property she exchanged for this property was encumbered property.

Q. Did you ascertain as to what the property she exchanged for this was worth?

A. No, sir; I did not; but I think it was situated at Cambridge.

Q. At the time she told you she paid cash for that property how did she say she purchased it—by the lot or by the tract or by the foot, or how?

A. She said it cost her 10 cents a foot, but did not say cash at that time. I asked particularly if it cost her 10 cents per foot, or if she had taken it in exchange, and she stated at that time that it was cash, and that she had invested the money at the advice of friends to save it from being squandered, as she expressed it; that her husband was dissipated.

643 Q. Have you since the trade made an examination of the records of Suffolk county as to the quantity of ground, so as to ascertain whether 10 cents per square foot would make $20,000?

A. On the 5th of September, at 281 Michigan avenue, when she gave me the plat and the deeds, I carefully examined — together and figured up the number of square feet and found that the number of square feet corresponded with the price of 10 cents per foot, making the amount expressed in the deeds a little less than $20,000.

Q. Did you upon this examination and inquiry at Boston and Clarendon Hills find any of the material allegations as to the location, value, and desirability of the property as represented by Mrs. Hanbury?

A. No; they were not true.

Q. Referring to the real estate at Winthrop Place that you exchanged for this property, I will ask you to state what the value of this property was at the time you made the exchange.

(Objected to until the witness has shown his competency to testify.)

644 A. About $12,000. It paid about 7 per cent. on $12,000, or the rents amounted to the sum of $1,300 per year, and the expenses would leave it so that it would pay a net income of 7 per cent. on $12,000.

Q. Do you form your estimate of its value upon that basis alone or have you had dealings in real estate in Chicago and elsewhere that enable you to form an opinion?

A. I have acted as a real estate agent in Chicago a good many years and have been, more or less, familiar or interested as to value of property, and my judgment is pretty good in that vicinity.

Q. You have stated that you called upon me, as your attorney, to

advise about the suit afterwards brought in the superior court against Mrs. Hanbury. Will you state the date you called upon me, as near as you can?

A. On the 28th of October, which was on Saturday, the same day that I called upon Rorke.

Q. State whether or not, previous to calling upon counsel for advice in regard to this trade, you called upon, Mrs. Hanbury or
645 whether you called upon her afterwards and before bringing suit; and, if so, state what was said and done.

A. I called upon Mr. Munn the next day after my return, which was Saturday, and I did not call upon her until the next week, on Monday afternoon, and had not seen or met her.

Q. State whether, prior to bringing of the suit, you went to her and informed her of your disappointment in these representations and requested a re-exchange of the property.

A. That was on the second time that I saw her, which was Tuesday evening.

Q. Was any one present?

A. The first time I just saw her a few moments in the hall and told her that I would call the next evening, which I did.

Q. Did you present the fact substantially to her as you had found them and request a re-exchange?

A. I don't think I stated the facts as I found them, altogether; did not go into much detail, but I told her I wanted to make another trade with her, and she very pleasantly asked what it was, and I said I wanted to trade back. She asked what objection I had,
646 and I told her she was playing sharp on me.

Q. What did she say, if anything, as to whether she would trade back?

A. She asked how she was playing sharp, and I explained a little to her, and she said she did not want to trade back.

Q. Then you brought suit?

A. No; I told her that I thought she had better think it over a little, and, perhaps, she might conclude to do so, and that I would call again. I did not intend to say anything very hard or express my feelings in the matter fully. I called upon her the next evening, which was on Wednesday, November 1st.

Q. Did you effect anything towards inducing her to exchange?

A. I could not do anything at all in the matter, and she told me she did not want me to speak of the matter again.

Q. You spoke in your examination-in-chief of acting under a power of attorney. Have you got that with you?

A. I thing I gave it up here when I was examined before.

Counsel for defendant Knowlton offers in evidence the
647 power of attorney from Mrs. Hoyt, the complainant, to this witness, which was made an exhibit in the other matter.

Counsel for defendant, Anna Hanbury, objects to the introduction of the power of attorney upon the ground that it does not affect the property whereof Anna Hanbury is seized (Winthrop Place prop-

erty), and upon the further ground that it is immaterial, so far as the defendant, Anna Hanbury, is concerned.

Q. What was the occasion of your sister giving you a power of attorney?

A. I suppose it was to do what a power of attorney required; and, furthermore, I think in some cases a power of attorney is needed.

Q. Were you handling or about to handle any money for her or collecting any rents for her prior to the purchase of the Winthrop Place property? And, if so, state to what extent.

A. Yes; I collected rents for her at 392 and 394 South Clark St., from $150 to $200 per month.

Q. For how many years?

A. Since the 1st of May, 1877.

648 Q. Who was the owner of that Clark St. property?

A. Mrs. Hoyt, my sister.

Q. By deed of the property or by lease?

A. She had a deed from the master in chancery for the buildings and improvements and the ground under a leasehold on which she paid a monthly ground rent.

Q. Has she had any other agent in Chicago during the last 6 or 7 years?

A. No.

Q. About how much money during these 7 years have you realized for her out of this property on Clark St.?

A. The net amount is about $8,000.

Q. About how much, over and above the commissions to you?

A. That is the net amount after taking out the rent and my commission.

Q. Now, state whether this money collected from rents and realized out of the Clark St. property went into the Winthrop Place property?

A. They did.

A. Now, state if the complainant, Emily Hoyt, for any considerable time prior to the commencement of this suit, ever complained of you as her agent.

A. I don't think she would have ever known of this suit

649 if it had not — brought to her knowledge by the suits.

Q. State whether before the commencement of the suit you accounted to her for any of these monies.

A. No; I never accounted to her for them, and she never demanded it.

Q. You spoke in your examination-in-chief of having turned over to her all the $1,800 and interest?

A. Yes.

Q. That was so much placed to her credit in good faith?

A. Yes.

Q. Has she got that money?

A. I don't know, but I don't think so.

Q. What has become of that money?

A. I paid that for the trust deed upon the property No. 22.

Q. Is that trust deed still existing or is it foreclosed?

A. The foreclosure was enjoined by injunction in the suit by Anna Hanbury against the trustee, Lyman Baird, and myself.

Q. Was that recently?

A. Yes, sir.

Q. Is that suit still pending in the superior court of this county?

A. Yes, sir.

Q. State what you may know of your own knowledge
650 as to whether that money has been paid to her or was paid into court.

A. Of my own knowledge I don't know.

Q. If it is paid into court whose money is it, and who does it justly belong to?

A. It belongs to her.

Q. Do you claim that and is it part of your accounting to the master in chancery?

A. Yes; I have claimed it and so consider it in my accounts.

Q. You speak of a suit being brought by myself as your counsel against Mrs. Hanbury in the superior court of this county; is that suit still pending and undetermined?

A. It is.

Q. I will get you to state whether, to your best knowledge and belief, you have made a fair and full statement of the facts as to your trust relationship?

A. I have.

Q. Is the testimony as given by you in this investigation before the master truthful, as you understand and believe?

Counsel for the defendrnt, Anna Hanbury, objects on the ground that by the order under which that testimony was taken she
651 cannot be affected thereby, and which order was entered February 23rd, 1883, in this cause.

A. It is.

Q. Do you think of any other matter or thing necessary or essential to this inquiry, so far as your trust relationship is concerned? and, if so, you may state it,

A. Mrs. Hoyt is my sister and has sufficient confidence in my management that she does not look into these matters of accounting often and closely, and therefore there was no complaint until the institution of these suits. I don't think she would have been brought into this case if Mrs. Hanbury had not made her a party in the other case.

Q. Do you recollect any conversation between you and Mrs. Hanbury, either before or since the commencement of this suit in the superior court, wherein Mrs. Hanbury spoke of your reliance upon her representations as to the location, value, and desirability of the Clarendon Hills property?

Objected to as immaterial and not proper cross-examination.

A. I remember her speaking of my relying upon her representa-

tions, at 1328 Michigan Ave., one or about Tuesday evening,
652 or it might be Monday evening, just after making the deed on the 28th. She said, in her parlor, in the presence of another lady, that I had in my trade with her taken her statements and made a trade without ever seeing the property.

Q. On what occasion was that and who was the lady, if you remember?

A. The lad*i*e's name was Olive A. Martin and the circumstances came in incidentally in talking about their matters of trade.

Q. This was before you went to Boston to examine the character of the property?

A. About three days before.

Q. Is that lady living in the city now?

A. Yes.

Q. Was any one else present, to your recollection?

A. No. The whole business representations and talk concerning this matter was entirely between Mrs. Hanbury and myself. She would even send the servant or her little son out of the room when we talked about it.

Q. You mean the chief talk in regard to the trade and the
653 inducements was made between you and Mrs. Hanbury alone?

A. It was. I don't think anything concerning the agreement was mentioned in Rorke's office.

Q. Have you made, to your knowledge, any statements inconsistent with your testimony in relation to that bargain and exchange of property and in relation to your finding the value and location of the property in Boston from what you have stated in your testimony?

Objected to as immaterial and an attempt to cross-examine his own client.

A. I desire to have the last clause of the former statement in relation to what took place in Mr. Rorke's office eraced, as counsel for Mrs. Hanbury says I may find three against me on that point.

By agreement of counsel the taking of further testimony is now adjourned until Tuesday next, at 9.30 o'clock.

TUESDAY MORNING, *March 6th*, 1883.

Counsel present as before.

By Mr. HILL:

Q. Have you since your examination read over your testimony heretofore taken under the decree?

654 A. Yes.

Q. Is that testimony substantially correct in every part?

A. Yes, sir.

Q. So far as your knowledge goes is it true?

A. Yes, sir.

(Complainant rests.)

Cross-examination by Mr. RORKE in behalf of Anna Hanbury:

Q. When did you become acquainted with the defendant Hanbury?
A. About the 28th of June last.
Q. Under what circumstances did you first meet her?
A. I met her at the drug store of Buck & Raynor, at the corner of State and Madison Sts.
Q. What was the occasion of your meeting her there, if any?
A. It was in answer to a letter from her.
Q. Did you get and receive a letter?
A. I answered an advertisement and received a letter in reply.
Q. In what paper was the advertisement?
A. I think it was in the Sunday Tribune of about June 25th.
Q. Had you had any acquaintance with her previous to that?
A. No, sir.
655 Q. After seeing her advertisement what did you do?
A. I answered the advertisement, and addressed it to some letter or figure at the Tribune office, but did not know the person.

Counsel for complainant objects to the statement as to the superscription and contents of the letter in answer to the advertisement.

Q. Then you first wrote to Mrs. Hanbury in answer to that advertisement?
A. I did not know her. I didn't put her name on the letter.
Q. In answer to your letter you received the letter introduced by you?
A. Yes.
Q. Have you that letter with you now?
A. No, sir.
Q. Can you now produce it?
A. If I go for it I can?
Q. What did you do after you met at Buck & Raynor's?
A. We went to Strauss' store, on West Madison St., I think, at 58 or 60.
Q. When you say last June you mean June, 1882?
A. Yes, sir.
Q. What did you do at Strauss' office when you and Mrs.
656 Hanbury went there?
A. Looked at some diamonds.
Q. How long did that interview last?
A. Don't exactly remember; it was very short.
Q. When did you next see Mrs. Hanbury after the interview at Strauss'?
A. The next forenoon, I think.
Q. When you met her there at the drug store did you jump on a car?
A. I took a car, but don't know as I jumped, and went on the West Side.

Q. About what day of the month was it when you met her there?
A. About the 29th of June.
Q. After the interview on the morning of the 29th of June did you request any one else to be present besides Mrs. Hanbury?
A. Yes; C. J. Shields.
Q. Is he the gentleman who has been so constant in his attendance at this examination?
A. He is a tenant in the premises.
Q. Have you not had intimate business relations with him for some time past?
A. Nothing very intimate.
Q. Do you office together in your down-town office?
A. No, sir.
657 Q. Do you keep valuable diamonds in his safe or in a safe under his control?

Objected to, and withdrawn.

Q. What was done on the morning of the 27th in the presence of Shields and Mrs. Hanbury at Strauss'?
A. We looked at the diamonds and talked some. The interview was not over a quarter of an hour.
Q. Did you separate there?
A. I think not. We took a car and came back on the South Side.
Q. What did you do on the South Side as long as she was with you?
A. Rode on a car.
Q. Did your ride come to a termination?
A. Yes, sir.
Q. Where?
A. I think Shields got off at one place; I got off at another and left her on the car.
Q. Did you go to the office of Shields at any time during the 29th of June when Mrs. Hanbury was present?
A. Yes.
Q. Was it in the morning?
A. I think so.
Q. Did you go over from Strauss' to Shields' office in the morning of the 29th?
A. I don't think so.
658 Q. After you got out of the car where did you go?
A. I think I went to the bank and got some money and met Mrs. Hanbury at Shields' office.
Q. Was that by a previous arrangement made on the morning of the 29th, when you left her on the car?
A. It was understood.
Q. What arrangement did you come to at Strauss' office after you saw the diamonds?
A. I agreed to make her the loan of $400 on the diamonds, and the loan was made, so far as paying the money over is concerned, in Shields' office.

Q. How soon after you left Strauss' did you meet her at Shields' office?
A. I think in half an hour; inside of an hour.
Q. Are these the diamonds in question on her now?
A. I think the brooch and pin are.
Q. You were down at Shields' office on the 29th?
A. I gave her the money there and she gave me the diamonds.
Q. How long was the note to run?
A. Two months, I think.
Q. What was the rate of interest?
A. 3 per cent. per month.
Q. Was the interest paid?
659 A. I never got any interest.
Q. Did you take it out by way of discount?
A. I don't exactly remember, but I don't think she gave me any money.
Q. Now, what has been your business for 7 or 8 years past?
A. Carpenter and builder.
Q. What else since you came to Chicago?
A. I came here in 1855 or '56.
Q. Have you been a resident here ever since?
A. No.
Q. Did you ever at any time have business from the city?
A. Yes, sir.
Q. For how long?
A. At various periods.
Q. Since 1865 or '66 have you been more than a year out of the city at any one time?
A. Yes, sir.
Q. For how long?
A. I don't know.
Q. Where were you?
A. In China.
Q. How long have you been residing in the city without break, counting backward from this time?
A. I think about 6 or 7 years.
Q. After you paid her the $400 do you remember of accompanying her from the office?
660 A. I don't remember.
Q. You don't remember what occurred when you paid her the $400?
A. I gave her the money.
Q. What did you do after that?
A. I don't remember.
Q. How soon after you paid her the money did you leave her or she leave you?
A. I think as soon as the business was done.
Q. When did you next see her after the 29th of June?
A. I think it was about the 8th of August.
Q. Had you not seen her between those dates?
A. I don't remember to have seen her.

Q. Do you remember whether or not all the interest claimed by you upon the loan of $400 was paid to you at the rate of 3 per cent. per month?

A. I never got any money for it.

Q. How did you come to meet Mrs. Hanbury on the 8th of August?

A. I think it was on the 9th of August. She knocked on the window as I was passing the house, at 281 Michigan avenue, and I went up the steps and she let me in.

Q. Was there any interest due about the 29th of July?

A. Yes, sir.

661 Q. At the rate of 3 per cent. per month on $400?

A. Yes; $12.00.

Q. When your interest became due on the 29th of July until the 9th of August did you go to her house?

A. I don't think so.

Q. Did you in any way make a demand for the payment of your interest?

A. I think so—no, I don't think so.

Q. Did you find yourself in the neighborhood of her house about the second of August?

A. I don't remember.

Q. How is it that you not state that you next saw her on the 8th or 9th of August, when in the other suit in the superior court, in the bill filed by you, letters of yours dated the 2nd of August and addressed to parties in Boston——

A. No answer.

Q. How did you happen to be at 281 Michigan avenue on or about the 8th or 9th of August and saw Mrs. Hanbury?

A. I think I was walking along there.

Q. Was it accidentally or did you go there on purpose?

A. I don't think I went there on purpose, but I think I

662 came around that way; I think I was south and came down that street.

Q. Is that your usual street for taking a promenade?

A. Yes; if I have any interest I generally walk around where that interest is.

Q. You had an interest in her?

A. I had an interest in getting my interest.

Q. What occur-ed when you were opposite her residence?

A. She knocked on the window.

Q. Did you look up?

A. I don't remember, but I don't think I saw her until she knocked.

Q. Did you know before you saw her that you were in her neighborhood?

A. I think I did.

Q. Were you looking up at the numbers of the houses as you were strolling along?

A. I don't remember.

Q. When you got opposite the m-gic number, 281, what did you do?

A. I don't think there was any magic in that number. I went in when she knocked.

Q. Don't you know that you had taken her address months before that, so that you could get your interest?

663 A. I don't think I took it with that view, but I certainly don't think I would have made her a loan without knowing her residence.

Q. Could you have seen her without looking up?

A. No; I could not.

Q. After you saw her what did you do?

A. I have answered before that I went up the steps and met her.

Q. What did you say when you met her? I suppose you spoke first?

A. I don't remember who spoke first, but she said she wanted to see me and had not the money to pay my interest that was due and ought to be paid, and she told me her troubles.

Q. Did she tell you as soon as you came up the steps that she saw you looking and was afraid you might not know the number?

A. I don't think anything of the kind was spoken.

Q. Did she come forward and welcome you?

A. I suppose so. I don't remember this little nonsense.

Q. Did you exchange salutations?

A. Oh, I think so.

Q. Did you pass the time of day or state of the weather?

664 A. I don't remember about these little things.

Q. How long did you tarry on the doorstep?

A. I don't think I stopped there at all. I went into the house—into the front parlor.

Q. Was any one else present?

A. I don't think so.

Q. Did you see any children around?

A. I don't think so.

Q. Did you hear them?

A. I don't remember. I may or may not.

Q. Did you see any other ladies in the house beside her, or gentlemen?

A. Nobody was in the room. They possibly may have passed in the hall.

Q. How long did you stay there at that interview?

A. I don't remember.

Q. Is your memory distinct as to what occurred?

A. On business I can remember, but I cannot remember dates or names.

Q. Can you remember the fact of the length of that interview?

A. No, sir; I don't remember very much about it?

665 Q. Was there any talk about interest.

A. She said she owed it and did not have the money to pay it.

Q. How long did it take her to tell you that?

A. A minute or so.
Q. Didn't you go there on account of your interest?
A. I went because she knocked.
Q. What time a day was it you appeared in front of 281 Michigan avenue?
A. I don't remember.
Q. Was it in the afternoon?
A. I am of the impression it was in the forenoon or middle of the day.
Q. Had you had your dinner?
A. I don't know.
Q. You didn't dine there, did you?
A. No, sir.
Q. Were you asked to look at the clock during the interview?
A. I don't remember.
Q. Didn't she call your attention to the clock?
A. I don't think she did.
Q. Did you at any time observe the lateness of the hour?
A. No, sir.
Q. What time did you go away?
A. I don't remember.
666 Q. Was that your first visit to her residence?
A. I think it was.
Q. That was the first time you made her a social visit?
A. I did not make her a social visit.
Q. How long did you stay there?
A. As long as required for buisness purposes.
Q. Didn't you stay four and a half hours there?
A. I don't remember. I don't think so.
Q. Was your attention called to the clock, and that it was already past six o'clock?
A. I don't think so. She kept me to tell me her troubles.
Q. Did she keep you against your will?
A. No, sir.
Q. You were free to go whenever you wished?
A. Yes.
Q. Where were you during all the time you were at her house—what room.
A. I think it was the front parlor.
Q. Just before you went away were you asked to take dinner—about half past six o'clock?
A. No, sir; I don't think she ever asked me.
667 Q. After that visit, whether for buisness or for pleasure, where did you next meet her and when?
A. I think I met her the next morning at the house there.
Q. At what hour?
A. I don't remember.
Q. What brought you there?
A. The conversation I had with her the day previous.
Q. What was that concerning?
A. Her troubles.

Q. Did you impart your troubles to her?
A. No, sir.
Q. What was the burden of her troubles?
A. She could not get along; she could not succeed. She said she had not the money to pay me, and that Strauss had been there for his monthly payments on the furniture and she did not have the money to pay him, and that she had sent word to him by his collector to come and take the furniture away. She said she must do something to get some money, and that she owned property—some very valuable lots in Boston—and she must sell them or raise money on a mortgage on these lots, and that if she could not do so
668 she would have to sell her house—her right in the furniture where she lived, at 281 Michigan avenue—and she detailed many particulars about the lots and explained the whole matter in detail.
Q. Was it near the end or the beginning of the visit that she told you that?
A. I did not make a visit.
Q. I wish to ask you again, because I am going to contradict you, if you were told that your visit lasted from half past two until half past six on that 8th or 9th of August, and that you refused an invitation to accept dinner, would that in any way assist your recollection as to the length of your visit—I mean the first visit?

(Question objected to.)

A. If I was told that I should think it was not exactly so?
Q. Does that aid you memory in any way?
A. I would not think much of such aid as that. She had a good deal of trouble to tell me, and it may have taken longer than I would naturally think. The exact time I don't remember.
Q. Did you talk business principally?
A. It was all business?
669 Q. Your business with her.
A. She wanted to tell me her troubles and asked me what she could do in the matter.
Q. Asked your advise?
A. She did.
Q. After being acquainted only a few days?
A. I had loaned her the money.
Q. What did you say as to your worldly prospects on that occasion?
A. I don't think I made any reference to them.
Q. Have you no recollection of what you said to her?
A. Yes; I remember what I said.
Q. Did you describe your landed property to her?
A. No.
Q. Didn't you — of some unimproved property outside the city limits?
A. No, sir.
Q. How often had you seen her on the occasion of this visit?
A. I saw her at the time of making the loan.

Q. Had you ever — her more than two or three times previous to that visit?

A. No.

Q. Did she pay you your interest upon the occasion of your first visit?

670 A. No.

Q. How much money did you bring with you to Shields' office when you paid Mrs. Hanbury the $400?

A. I don't remember.

Q. Did you bring any large amount besides what was necessary for the loan?

A. I don't remember.

Q. Did you make any display of bonds or money before her then?

A. No.

Q. In the presence of Shields?

A. I don't think so, but don't remember.

Q. Do you know — much money or securities you showed Mrs. Hanbury, in the presence of Shields, upon the occasion of paying the $400, over and above that amount?

(Objected to as immaterial, incompetent, irrelevant, and not a proper cross-examination.)

A. I don't know.

Q. Where did you get that $400?

A. I don't remember, but think it was from the bank.

Q. What bank?

A. I don't remember.

Q. Do you mean to say that you don't remember what bank

671 you kept your money in as late as August last?

A. I mean to say I do know.

Q. What bank?

A. The International Bank.

Q. Do you keep it in your own name?

A. I kept it in certificates of deposit.

Q. Payable to your order?

A. Yes, sir.

Q. Do you know of any large amounts of bonds or notes secured by mortgages or deeds of trust being exhibited in that office upon that occasion?

A. I don't think I did; I don't remember.

Q. Did you have any other form of wealth besides money upon the occasion of paying this $400, and show it to her and make any exhibition of it to her by rolling it around in your hand in the presence of Shields?

A. I don't remember; I have no knowledge of it.

Q. Did you deposit any large amount in the safe of Shields upon that occasion?

(Objected to — irrelevant.)

A. I think not.

Q. Or any other form of wealth or securities?

A. I think not.

Q. You said you next saw her the next morning. Where
672 did you see her, and how long did your visit last?

A. The next morning, at 281 Michigan Ave., the 10th of August.

Q. What occurred upon that occasion?

A. I told her I had thought of that request.

Q. What was her request?

A. That I should — her another $100, and after a long interview I declined. She asked me if I would think it over and perhaps I would do so, which I did.

Q. What was the result?

A. I called the next morning and told her I would let her have it.

Q. What securities did you take?

A. No securities.

Q. Did you take a note?

A. I think she gave me her note and wanted me to assist in raising a loan on her Boston property.

Q. When did she give you her deeds?

A. The second visit, upon the occasion of my saying I would try and assist her.

Q. In what way were you to assist her?

A. I was to assist her to realize on her Boston property.

Q. By sale or by mortgage?

A. By mortgage.

673 Q. Who mentioned the sale or mortgage? Did she upon that occasion or the previous visit?

A. No one mentioned it. It was talked over between her and myself, and she mentioned that she would have to raise money on her Boston lots; and at the second interview she gave me the deeds and desired me to assist her to obtain a loan, and I agreed to do so; and, in accordance with agreement and by her request, about the 12th I wrote letters to Boston to aid her in obtaining money to pay what was due me and assist her with her house in payment for the furniture.

Q. Is it usual for gentleman who loan money at 3 per cent. per month on diamonds to take such an interest in any one of their customers where they are amply secured.

A. I don't know the usual custom. I took no more interest than is customary, except to reach my money in the shortest form.

Q. Would you not rather have had diamonds valued at $2,500 than the $400?

A. No, sir; I would not.

Q. Why not?

674 A. Because the $400 was of more value than the diamonds.

Q. What was your estimate of the value of the diamonds when you loaned the $400?

A. $400.

Q. Do you mean to tell the commissioner that you would loan $400 on diamonds worth $400 and leave no margin?

A. I mean to say that I did not consider I would realize more

than $400 and my interest and trouble if it became necessary to dispose of them.

Q. When you first agreed to loan Mrs. Hanbury $400, after seeing the diamonds, what valuation of them had you received, upon inquiry?

A. Shields looked at them and told me what was his opinion.

Q. What did Strauss say about it?

A. He told me he was not a money-loaner, but had loaned $300 on them.

Q. What were you informed before you loaned her the money as to the value of the diamonds?

A. I was informed that Mr. Strauss had loaned $300 on them, and I was informed by Shields that he considered them good for $400.

Q. What value did he place upon them if he considered
675 them good for a loan of $400?

A. That was his value.

Q. His market value of the diamonds?

A. He didn't say anything about the market.

Q. Did he give you any other idea of the value, except that he considered them good for $400?

Objected to.

A. No.

Q. Did anybody else tell you they were worth more than $400?

A. No; unless it was Strauss.

Q. What did he say?

A. He wanted to get all the money he could.

Q. Didn't he offer to loan the money—the additional sum required—if you would not?

A. I don't know.

Q. Didn't he want to make the loan in preference to you?

A. He told me he would not make it, and said he wanted to use his money.

Q. Did he say he would get it if you would not loan it for Mrs. Hanbury?

A. I don't remember such conversation.

Q. Upon occasion of your morning visit, which you say was on the 10th of August, did you ask for the deeds?

676 A. I don't think any one asked for them.

Q. Did you say you would like to see them?

A. No, sir; they were produced voluntarily by her and given to me for the purpose of aiding her in negotiating the loan.

Q. Didn't she tell you upon the occasion of that visit that she could not do anything in the way of a loan until she heard from her lawyer in Boston?

A. No.

Q. Did she ever mention that there was a man in Boston who had been her attorney for years?

A. I think she said so.

Q. Did she mention his name?

A. I don't remember.
Q. What did she say about her Boston lawyer?
A. She said a good deal about the property, but I don't think she said anything about the lawyer.
Q. Didn't she decline to say anything about a loan until she heard from her Boston lawyer?
A. No, sir; she did not. She didn't say anything about selling.
Q. What was it?
A. It was about mortgaging.
677 Q. Didn't she tell you that before she could mortgage the property she would have to hear from the Boston lawyer?
A. Not at that time.
Q. Where were you sitting when this discussion about the mortgage took place, on the 10th of August?
A. I don't remember.
Q. Was it on a sofa?
A. I don't remember. I don't remember such things as that.
Q. How were the chairs arranged?
A. I don't remember.
Q. Was it a plush sofa?
A. I don't know.
Q. Did anybody else occupy the same seat with you?
A. Nobody, except she was in the same room.
Q. Did she occupy the same sofa?
A. I don't remember.
Q. Were you at one end and she at the other end of the sofa?
A. I don't remember.
Q. Didn't she suggest that it was necessary on account of her being hard of hearing that she should sit near you?
A. I have no remembrance of it.
Q. Did she produce the deeds upon that occasion?
A. She got them and brought them.
Q. Did she leave you to get them?
678 A. No.
Q. Where did she have them?
A. She brought them in her hand.
Q. Did she leave you during the visit and go and get them?
A. Oh, I guess so.
Q. How long did she remain away from you?
A. I think a few minutes.
Q. Did she produce the deeds at your request?
A. No, sir.
Q. When she produced the deeds you looked them over?
A. Yes, sir.
Q. About how long a time did you occupy in examining the deeds?
A. 10 or 15 minutes.
Q. How long were you examining them as an expert real estate man?

(Objected to as irrelevant.)

A. I didn't see anything wrong in the deeds; they seemed to be the usual deeds.

Q. Had you previous to that time been accustomed to dealing in property by the square foot?

A. No.

Q. That is the first time you ever dealt in property by the square foot?

A. I didn't deal in this that way.

Q. Previous to that time had you seen many deeds where
679 the property had *had* been sold by the square foot?

A. I think I have, more or less.

Q. Did it strike you as peculiar that that property had been sold by the square foot?

A. I think not.

Q. Was there any conversation between you and her as to the Eastern method of selling property by the square foot?

A. I think it was mentioned, but I don't remember by whom.

Q. During this interview and after looking at the deeds did you throw out any intimation or ask any questions of her as to whether she would not like to trade for Chicago improved property?

A. I don't think anything was mentioned about a trade at that time. It was about a loan.

Q. Didn't Mrs. Hanbury tell you upon this occasion that it suited her exactly to make a good trade?

A. I don't think a trade was mentioned at that time, but was subsequently.

Q. Was anything else mentioned except obtaining a loan?

A. Selling or getting a loan.

Q. Was anything else mentioned besides what you have
680 mentioned *mentioned* at that time?

A. She gave me a description of the property and talked considerably concerning it.

Q. Did she tell you at that time that the idea of trading or exchanging could not be entertained by her until she consulted her Boston lawyer?

A. I don't think she mentioned trade then.

Q. What did you take away with you on that occasion.

A. The deeds.

Q. Didn't you ask her if she would object to your taking them for a short time?

A. I don't think so.

Q. How did you come to take them?

A. I was to aid her by writing to Boston and endeavor to raise the money or make a loan, and the deeds she gave me so I could write and give a description from them of her Boston property.

Q. She consented to your taking the deeds without hesitation?

A. Yes.

Q. Did you know anybody in Boston in the real estate business?

A. No, sir.

Q. Did you at this interview on the 10th of August tell
681 Mrs. Hanbury that you were possessed of considerable improved property on the West Side, at Winthrop Place?

A. I don't think so.
Q. Did you tell her you had some houses on the West Side?
A. I don't think so.
Q. Or would like to trade property on the West Side to her?
A. I don't think any matter concerning a trade was spoken of on that occasion.
Q. What suggested to you the idea of going to Boston to see the property on the 10th of August; did she do so?
A. No, sir.
Q. Did you upon this visit ask her to go with you to Boston for any purpose?
A. I did not.
Q. Was she not shocked at the idea?
A. No, sir; I never thought of such a thing.
Q. Upon this visit did she give you the names of any persons who would aid you in corresponding, with a view of mortgaging the property?
A. She desired me to write to a gentleman at Clarendon Hills, but did not give his name.
Q. Did you do so?
682 A. I did, but never heard from that letter. I put four stamps in the letter.
Q. When did you next see her after the 10th of August?
A. I don't remember.
Q. Did you see her again in the month of August?
A. Yes.
Q. How soon, about?
A. I think I could not give the day.
Q. Will you now please produce all the letters written by Mrs. Hanbury to you at any time?
A. I produce a letter written by her June 26th, 1882.
Q. Have you any other letters?
A. I think I have, somewhere.
Q. How many letters did you produce in your direct examination?
A. I don't remember. I think two more.
Q. Give, as near as you can, the date of the next interview with Mrs. Hanbury after the 10th of August, and when and where it took place.
A. It was a few days after that; at 281 Michigan Ave.
Q. Was it a week afterwards?
A. I think not.
Q. Who was present?
A. Mrs. Hanbury & myself.
Q. What hour of the day did you meet?
683 A. I don't remember.
Q. Could it have been in the afternoon?
A. Very likely.
Q. Did you meet at any other place between the 10th and the time of that visit?
A. I don't think so.

Q. What occurred on the occasion of your third visit after the 10th?

A. I called to inform her that I had written to Boston as she had requested me to do. She said that she would write to Boston, and we talked concerning the matter, and at that time I returned the deeds.

Q. How many deeds were there?

A. 2.

Q. What was the talk concer-ing at this second visit?

A. The talk was concer-ing the property at Clarendon Hills and the best disposition that could be made of it. I suggested to her when I returned the deeds that it was a considerable investment, and she said the property had cost her 10 cents a foot, and she had been careful to keep it as her nest-egg and didn't want to sell
684 it at all, and it would be worth a good deal more money than it was in a very short time. She spoke of the frequent trains running to that station and the advance that had been given to these lots thereby, and the talk was about the best disposition to be made, and we concluded that it would be best to get it into property from which she would have an income, and that, if she could not raise the money on it by mortgage, I told her I thought that that was the very best thing that could be done, and it was at this time that she spoke of exchanging it.

A. Who did?

Q. She did. She said she wished she could exchange it with me for some Chicago property.

Q. Did she speak first about an exchange?

A. Yes.

Q. How did she know you had real estate?

A. She knew it quite well from the time I made the loan, which was more than a month previous.

Q. Had you not stated or made representations to her as to your having real estate in Chicago or its vicinity?

A. No, sir.

685 Q. When did you tell her that you were a man of property?

A. At the time I loaned her the $400 I told her that Mr. Shields was a friend of mine, who lived in one of my houses, and from that time she knew that I had houses or claimed to have houses from which I was deriving rent.

Q. That was the second time that you saw her, when you paid her the $400?

A. Yes.

Q. Do you mean to say that you told her that Shields was a friend of yours the second time you saw her?

A. Yes.

Q. Did you at any of these visits mention further or additional circumstances concerning your own property?

A. No, sir.

Q. Did you ever say you had considerable interest in suburban property in the neighborhood of Chicago?

A. No, sir.

Q. Did you ever suggest the idea of trading this property in Boston for Chicago property upon the occasion of your third visit?

686 A. When she spoke to me about exchanging with me I told her I thought it would be a good thing for her and perhaps for me.

Q. Do you swear that she first mentioned an exchange of property?

A. I positively do.

Q. Was not her idea either to sell or mortgage the Boston property?

A. It was up to the time of writing these letters, and I wrote these letters with that view and intention.

Q. When did that idea cease between you?

A. Upon the receipt of the Boston letter to me, when I showed them to her.

Q. Before any mention of an exchange of property was made you had heard from Boston?

A. No.

Q. You say the idea of mortgaging or selling the Boston property ceased as soon as you heard from Boston?

A. Yes.

Q. When did you hear from there first?

A. About the 21st of August.

Q. Go on and detail in your own language what occurred upon the *the* occasion of your third visit?

687 A. When she mentioned that she would like to exchange with me for some property in Chicago that was paying an income I said perhaps we could do so, and it would be a good thing for her and me.

Q. What property did she refer to when she spoke of exchanging property?

A. She did not exchange property.

Q. Didn't she of hers?

A. Yes; the Clarendon Hills property.

Q. Did she mention the number of the lots?

A. 27, I think.

Q. Then it was after you heard from Boston that you first talked of an exchange?

A. I don't think so.

Q. When was it?

A. A few days after my writing to Boston.

Q. Upon the receipt of the Boston letters did you state their contents to Mrs. Hanbury?

A. I think not.

Q. Did you, upon the receipt of the Boston letters from R. Heber and Samuel R. Knight, decline to further interest yourself in getting a loan or selling the property for her?

A. Yes.

Q. When was that?

A. About the 21st of August.

688 Q. Did Mrs. Hanbury receive and entertain an idea of exchanging until she heard from her lawyer?

A. No, sir.

Q. Do you swear that positively?

A. Yes, sir.

Q. When did she first mention the name or fact that she had a Boston lawyer looking after her business?

A. At the third meeting, when I returned the deeds.

Q. Did you, after disposing of the business, make social matters an object of the visit?

A. No, sir; there was nothing social.

Q. What did you mean when you just now stated that you thought you would be greatly benefited by an exchange for the Boston property?

A. There has been no statement of that kind by me.

Q. Have you stated everything that occurred at that third visit?

A. No, sir.

Q. Then go on and state what occurred.

A. When Mrs. Hanbury spoke to me at that time concerning an exchange of her property for property in Chicago, which would
689 pay an income, we talked it all over. I said that I didn't know anything about the Boston lots, but she appeared to have considerable money invested there by the showing of her deeds. Then at that time she said it cost her 10 cents a foot, or about $20,000 for the 27 lots, and I said that was a good deal to have invested in unproductive property, and that amount of money properly invested in productive property would help her greatly, and enable her to pay me and help her out of the furniture difficulty. I think it was at that time that I told her that I had property or spoke of some improved property.

Q. You mentioned to her the fact that you had property?

A. I described my property when she spoke of it, and told her that I had no objection to her selling the property.

Q. Did she tell you how she got the Clarendon Hills property?

A. Not at that time. I think it was in the talk concerning the trade. She broached the subject of the trade, and it was in
690 that talk that I described my property which I claimed to own, and I said that she could go and see it, and I told her its location, gave the street numbers, and she said she would like to go and see it. I think at that time mention was made or arrangements made, rather, for her to go and see it, and me to go and show it to her. At first I did not speak about showing it, and she said she did not want to go without me going with her, and I think a time was set for us to go.

Q. Had you at that time heard from Boston?

A. No, sir.

Q. Have you now stated all that occurred at the third interview?

A. There may have been some little things that I could not remember.

Q. Substantially all?

A. Yes, sir.

Q. When did you next see her?
A. It was by appointment, at the time we were to go to look at the houses.
Q. Did you go with her to see the houses?
A. Yes, sir.
Q. When was it?
A. A day or two afterwards.
691 Q. Did you show her the houses?
A. Yes, sir.
Q. Whose houses did you tell her they were?
A. I don't think I mentioned anything about it, but it was stated that they were mine.
Q. Did any talk take place at the house?
A. I don't remember anything particularly.
Q. Can you fix the day by any memorandum when it was that you visited Winthrop Place property?
A. I cannot now.
Q. Was it within a week or so after the third visit?
A. Yes.
Q. May it not have been on the 22nd of August?
A. I don't know but it was before I had received the Boston letter from Knight and Heber.
Q. Do you swear it was before you received those letters that you showed her the property?
A. Positively.
Q. Do you recollect being at her house at or before the 21st of August and showing her some letters from Boston?
692 A. I don't remember, but I think it was about the 21st.
Q. What letters were those you showed her?
A. Those were from Knight and Heber and were dated about two or three days before, more or less.
Q. Do you remember the day that you went out with her?
A. No.
Q. But you remember that it was about the 21st that you received these letters?
A. I remember it; it was about that time.
Q. Do you remember that when you were there you showed or explained to her the contents of the Boston letter-?
A. I gave them to her and she read them.
Q. Did you make any other statements in regard to the Boston property to her at that time?
A. Yes, sir.
Q. What was it?
A. That I did not think much of the Boston property from these letters.
Q. Did you not at the time of showing these letters to her decline to further interest yourself in the way of procuring a loan or
693 selling the Boston property?
A. Yes, sir; I declined.
Q. Then all matters concerning the Boston property were off?
A. All matters of trade and loan were stopped.

Q. About what time was that when this was dropped?
A. I think it was somewhere near about the 21st, or a few day either way; it may have been the 22nd or 23rd.
Q. Where was the letters you received from Heber and Knight?
A. In my possession, and you had them here.
Q. You say that one of these letters was dated about the 20th?
A. Yes; I suppose so.

Mr. HILL: They were both dated the 18th.

Q. After all matters in the way of exchange or efforts on your part to mortgage or sell the property for her were dropped when did you next see her?
A. It was about the 4th of September.
Q. Had you seen her between the 21st of August and the 4th of September?
A. Not between those two times.
694 Q. Did you pay any evening visit to her when no buisness was mentioned?
A. I don't remember, but I think not.
Q. Did you pay her any visit, on buisness or otherwise, about the 28th, 29th, 30th, or 31st of August, when something was maturing?
A. I don't think I did.
Q. The $400 was about maturing then, was it not?
A. Yes, sir.
Q. Did you make any demand upon her for its payment?
A. No; there is a thing that occurred in here that never has been spoken of that I would like to explain. I want to explain all I can. That was about the 15th of August. After that third or fourth visit I loaned her some more money.
Q. How much?
A. The amount of the note was $100. She needed some money, and asked me for it, and I may have called once or twice or perhaps three times before letting — have it.
Q. Did you take any security from her for it?
A. No; except her note.
Q. Did you regard yourself as being sufficiently secured?
A. No, sir; I did not.
Q. Then between the visit on the 21st and the 4th of Sep-
695 tember you never saw her?
A. I would not say positively.
Q. Did you see her from the time you went to see the property until the 4th of September?
A. Yes.
Q. How often?
A. I don't presume more than two or three times.
Q. When was it you went out to see the property?
A. I can't fix the date, but it was just before receiving the Boston letters and after I had written.
Q. If your letters were dated on the 12th of August and the letters from them were dated August 18th it was between that time that you saw the property?

A. Yes; between seeing the property and getting the Boston letters could not have been more than three days.

Q. At the time of receiving them did you go straight to her?

A. I think I called in the evening, but can't say positively that it was the same evening.

Q. Where did you go the next day after your visit to Mrs. Hanbury when you showed her the Boston letters?

696 A. I didn't go any where after I showed her the Boston letters.

Q. Do you swear to that positively?

A. Yes, sir.

Q. How did you happen to see her on the 4th of September?

A. I called to see her and to see whether I was likely to get any money.

Q. Was that in the evening?

A. Yes.

Q. Who did you see?

A. I saw her.

Q. Anybody else?

A. I might have seen a servant girl.

Q. What did you say?

A. I asked how things were going and whether she had the money for me, and she said she did not. She said she had advertised her house through some real estate man and was expecting to sell it out. She said it was too bad to have to sell the house, and she very much wanted to trade for some property she could get an income from.

Q. And you offered to come to her rescue?

A. No; I didn't offer to. I told her I didn't know enough about her property, and she told me it was very valuable property

697 and showed me the plat and stated all about it.

Q. Was that the first time you saw the plat?

A. I think that was the first time I had seen it.

Q. Do you know whether she sent on to Boston at your request for the plat?

A. She did send, but not at my request.

Q. Did she say you could have it if you wished?

A. No; she said she would send and get it.

Q. You had seen the deeds before?

A. Yes; before writing the letters.

Q. What further conversation took place between you and Mrs. Hanbury on the 4th?

A. She described her property and showed me the plat and urged me very strong that we should make the exchange so she would not have to sell her house.

Q. What inducements did she make to you to make this trade?

A. She said it was very valuable property and had cost her 10 cents a foot and the men that wrote these letters didn't know anything about the value of the property.

698 Q. Did she ever at any time tell you that she paid 10 cents a foot for the property until after the exchange?

A. Yes; she told me on the 4th of September in answer to my

question. I said her deeds seemed to be all right and asked her how the property come to cost so much, and I said to her, "Did you exchange it or take it under a mortgage or in any other way? Her reply was, "Nothing of the kind that was cash, and my friends all advised me to make the investment so it would not be lost, as the balance of my fortune had been spent."

Q. At any of these interviews of which you have spoken did she speak of auction sales being had of suburban property?

A. Yes.

Q. What did she say?

A. She said this property I purchased was very cheap for 10 cents; that auction sales had been made right near that for better prices, and that her friends had congratulated her upon the cheap price she had paid for the lots.

Q. Did she ever tell you that *that* same year or the year before auction sales of property had been made near there for 10
699 cents a square foot.

(Objected to as not responsive to any question in chief.)

A. Yes, sir.

Q. Is that all she ever told you before the making of the contract of exchange in reference to the price of land per square foot near Clarendon Hills?

A. No, sir; she said this property was worth really more than it would have been at the time of these sales.

Q. Is that all?

A. She said some property had been sold as high as 14 cents per square foot at auction. She showed me the location of the depot and the nice streets laid out directly to the lots, and the nice walk that was built up, and that the ground laid up nice.

Q. Do you swear that she used the expression, "It laid up nice?"

A. I think that is not the words; "beautifully located" were the words, and said it was dry and there were nice walks, were the words, I think, she used, and the property was within two or three minutes' walk from the station, only a short block.

700 Q. Didn't she tell you she did not know how far it was from Boston?

A. No, sir.

Q. Did she tell you it was about as far as from her house to Harrison St. from the property to the station?

A. No; she said it was one short block from the station and the road led directly up to it.

Q. Didn't she tell you that if you made the exchange you would not be able to make a sale for several years to come?

A. No, sir.

Q. Didn't she use language of a similar import?

A. No.

Q. She did tell you it was unimproved property?

A. Yes.

Q. Did she ever suggest to you the propriety of taking a look at the property before making an exchange?

A. No, sir.

Q. Did you tell her you had some improved property to trade for vacant property?

A. No, sir.

Q. Did you tell her you had three brick houses and lots to trade for vacant property?

A. No; I didn't express it in such terms.

Q. What did you tell her?

A. I represented that I had these houses.

701 Q. What did you do when you got the plat?

A. Looked at it and compared it with the deeds.

Q. Do you remember of stating the other day in your direct examination that at the time you got the deeds you also got the plat, or a day or two afterwards, and that you figured up the number of square feet and found that the plat and deeds corresponded, and that the price of 10 cents a foot corresponded with the consideration expressed in the deeds?

A. No, sir. I said that on the 4th of September, when I called for my money, Hanbury showed me that tract and urged me to make a trade, saying that she would be obliged to sell her house. At that time she showed me the location of the station on the north side of the railroad, and the short block from the station to Poplar St. of two or three minutes' walk, and that I took at that time the plat and the deeds and figured out, with the assistance of that plat as marked with the number of feet, and found that the price corresponded with the consideration in the deeds.

702 Q. Was that before the making of the contract for the exchange?

A. Yes; I think that was on the morning of the 5th that this conversation occurred.

Q. You made this careful calculation before entering into the contract with her?

A. Yes; on the 4th or 5th.

Q. Why were you so anxious to make the exchange with her?

A. I was not anxious to make the exchange.

Q. Didn't you call upon her all the time and she never call upon you?

A. Yes, sir. She could not call upon me because I am around in different places.

Q. Didn't you give her your address as being in the room with Shields?

A. No.

Q. Didn't you say that place was where you went to get your letters?

A. I said my letters came there.

Q. And you never gave her any other address?

A. I don't remember.

Q. When you next saw her after making this calculation what was to be done?

A. At that time I promised to make up my mind and ask-

703 her to wait until I wrote to Boston, and she said she could

not wait; that she had advertised her property, and that parties had been there to see it, and that she could effect a sale of her house, but that she would put that off or delay the matter a few days if I would look the plat over and make up my mind and let her know, and I agreed to do so at that time.

Q. From the time you made this calculation how long a period was it before you finally exchanged deeds?

A. Well, I think I told her I would let her know in two days, and I think I called there on the 7th, in the afternoon or in the evening, and talked with her, and she then praised up the property.

Q. From the time you made this calculation how long a period of time was it until a final exchange of property was made and the deeds delivered?

A. The deeds were delivered on the 28th of September, I think.

Q. What did you do in the 24 days' time between the day of your calculations and the time of your finally signing the deed?

704 Did you write to ——?

A. No, sir.

A. At the time or from the time of that calculation had you been in correspondence with parties in Boston?

A. I wrote several letters.

Q. In respect to the Clarendon Hills property?

A. Yes, sir; but the articles of agreement was made on the 3rd or 4th day afterwards, and the deeds were delivered about 20 days afterwards.

Q. What occurred between the 4th of September and the making of the articles of agreement?

A. About the 7th I called upon Mrs. Hanbury and had conversation with her concerning the property—its value and location.

Q. Then, from on or about the 21st of August until the 7th day of September, the day before the signing of the articles of agreement, you had been considering the question of an exchange of property?

A. No, sir.

Q. When was the subject of an exchange of property first broached?

A. A few days after writing the Boston letters, which was about the 12th of August.

705 Q. How many days after the 12th of August was the subject of an exchange first broached?

A. A day or two or two or three days.

Q. Possibly about the 15th of August?

A. Possibly.

Q. From about the 15 of August until the 7th of September, 1882, the question of exchange of property had been considered by you?

A. No, sir; the question was only considered up to the time of receiving the Boston letters, which knocked the whole thing in the head.

Q. When was that?

A. About the 21st or 22nd.

Q. From the 21st or 22nd until the 7th day of September you had to consider the exchange of property with knowledge of the unfavorable views from Boston?

A. No; I didn't consider it until the subject was broached.

Q. When were the negotiations reopened after the matter was dropped?

A. About the 4th of September.

Q. With the knowledge you had, unfavorable as it was, you made this contract on the 8th day of September?

706 A. She talked me out of the letters, and that they were written by parties who did not know, and said that she had been there with her phaeton and rode around, and told me where the station was, and gave me the full details.

Q. You had known this unfavorable news of the Boston property from about the 22nd of August up to this time?

A. I had dropped the matter and didn't think any more about it. She said she would not consider the letters, and the matter was dropped.

Q. Didn't she say that she would not do anything without advice from Boston?

A. She did, about the time of writing the letters.

Q. Didn't she say that she had heard from her Boston lawyer, who said for her not to make any contract for Chicago swamp lots?

A. No, sir.

Q. At the time you went to see the property didn't she tell you that she had to write to Boston about the exchange of the property?

A. I think that was before. I don't think she said so then.

Q. Didn't she give you the name of her Boston lawyer?

707 A. Yes, sir.

Q. Didn't you write to him?

A. No.

Q. What was his name?

A. Asa Cottrell.

Q. Did she state to you, about the 4th of September, that she had unfavorable advice against making an exchange from her Boston lawyer?

A. Yes, sir.

Q. What did you say to that?

A. I didn't say anything.

Q. You laughed at her?

A. No, sir.

Q. Didn't you tell her to write to that Boston lawyer and tell him to mind his own business?

A. No, sir.

Q. Was the Boston lawyer finding fault with the Winthrop Place property?

A. No, sir.

Q. Did she show you that letter?

A. No, sir.

Q. After Mrs. Hanbury said she had received the Boston lawyer's letter didn't you still ask her to go on and make the exchange?

A. No, sir.

Q. Didn't you ask her to make the exchange?

A. No, sir.

708 Q. At any of those interviews had between the 4th and 7th of September, and just before the signing of the contract, did you urge her or ask her to go on and make the contract, notwithstanding the prohibition of the Boston lawyer?

A. No, sir; I did not.

Q. Did you ever make any remarks that might not be considered complimentary to the Boston lawyer?

(Objected to.)

A. I don't think I did.

Q. Did she ever, at any time, tell you that before any agreement of exchange was made she would have to write to Boston?

A. Yes.

Q. When was that?

A. When she first spoke about the exchange—about the next day or two after I wrote that.

Q. You say the letter she showed you and read to you was in answer to her letter of some three weeks previous?

A. I don't know.

Q. How many interviews took place between the 4th and 7th of September?

A. One.

Q. What time was that?

A. The morning of the 5th.

Q. What occurred at that interview?

709 A. She gave me the plat and deeds and expressed herself concerning the property, and spoke of its desirability and wanted — to let her know as soon as possible what I would do, and said she could not wait for me to write to Boston.

Q. Had you not already written?

A. Yes; but they were unsatisfactory and they didn't seem to know much.

Q. What was the next interview?

A. I think I called upon her about 5 or 6 o'clock on the evening of the 7th.

Q. At each of these interviews you called upon her?

A. At the time we went to look at the house she met me downtown and we went on the cars from there.

Q. With the exception of your visit to the West Side to visit your property, every other time you called at her house?

A. Yes.

Q. On each occasion you went there of your own free will and accord?

A. It was generally by some arrangement; I had papers or something.

Q. You were free to go and come just as you wished?

A. Yes.
Q. No one exerted any influence to induce you to go?
A. She asked me to call, or I had deeds and plat to figure
710 on, or loaned her the other $100. These things were generally understood.
Q. You have pretty good knowledge, have you not, of the manner in which real estate transactions are carried on?
A. Yes.
Q. You are quite a business man?
A. Considerable so.
Q. You are pretty well posted?
A. Well, I have had time enough to learn something about business.
Q. You know the effect of signing agreements and giving mortgages?
A. Yes, sir.
Q. Now, what occurred at that interview on the 7th between you and her; what paper did you bring her, if anything?
A. As before stated, I returned the plat and the two deeds.
Q. You presented a contract ready for her to sign?
A. I think I had a memorandum.
Q. A memorandum of agreement, was it not, for an exchange of these properties?
A. No; I think it was a memorandum of one of the deeds I returned; I think it was that.
Q. Have you that paper now?
A. No.
Q. Did you give it to her?
711 A. I left that in your office.
Q. How long was your visit on the afternoon of the 7th?
A. I think an hour.
Q. That was strictly a business interview, was it not?
A. Yes, sir.
Q. Who were present at that interview?
A. No one, unless some one came in the room.
Q. When did you next see her?
A. By appointment, the next morning, at your office.
Q. Didn't you call upon her on the morning of the 8th?
A. I think so.
Q. She was generally at home for you?
A. I think she was going out then.
Q. Where was she going to?
A. Your office.
Q. You stopped her. Did you detain her long?
A. I don't think there was much of a stop.
Q. Did you pay her any visit?
A. I don't think I went into the house.
Q. Didn't she ask you into the parlor?
A. I think not.
Q. Did you present any paper to her?
A. I think I showed her the memorandum of agreement?

Q. What became of that?

A. I think I left it at your office.

712 Q. Didn't you know it was destroyed when another paper was drawn up?

A. I don't know, but I should naturally suppose that it might have been.

Q. What was that paper or memorandum you presented her on the 8th?

(Objected to.)

A. It was a very small affair—considerably smaller than the agreement made on the 8th.

Q. Was that similar to this agreement (presenting witness with agreement)?

A. It *want* to the same effect, pretty much in detail.

Q. You mean it was to the same effect as Exhibit "N?"

A. No; it was not to the same effect.

Q. There was some slight variance?

A. No material change; it concerned the same property.

Q. Who drew up the memorandum of agreement?

A. Your father.

Q. On the morning of the 8th?

A. I think that was the time.

Q. I mean who drew up the first memorandum of agreement you showed her on the morning of the 8th?

A. I drew it.

Q. Was it your handwriting?

A. Yes.

Q. What did you ask her to do on the morning of the 8th

713 concerning this agreement.

(Objected to.)

A. I don't remember what I told her.

Q. You asked her to sign it?

A. I don't remember.

Q. Didn't you suggest to her to avoid lawyers' charges, and that you and she could sign the agreement?

A. I don't think I had anything to say about lawyers. I think I told her it would be an expense to somebody in making the papers.

Q. You didn't want to go to a lawyer?

A. I didn't desire to go to your office.

Q. She wanted to go to a lawyer and you did not want to employ counsel?

A. Not after making out the papers.

Q. The only desire and object you had was to sign the papers?

A. I didn't say anything about going to lawyers.

Q. Or getting anybody to draw up the papers?

A. I said I could make out the papers and not make any expense.

Q. When and where did you draw up that memorandum of agreement?

(Objected to.)

A. I think I did it on the same afternoon at the office of the building on Clark St.

Q. Was that your private apartment there?

714 A. No, sir.

Q. Is it your business office?

A. No; it is the office of the building.

Q. Isn't — occupied simply by you?

A. Yes; when I have charg- of it.

Q. During all that time no undue influence was exercised over you?

A. No.

Q. Nor at any other time from the commencement of these negotiations up to the 8th of September?

A. The time the undue influence was exerted was when that original agreement was destroyed and the $500 that was inserted as a forfeiture for the non-performance of the agreement was omitted. Your father was sharp, and that was omitted.

Q. You inserted in the memorandum you wrote a $500 forfeiture?

A. Yes; and he was too sharp for me.

Q. Did your agreement that you wrote provide for an even exchange of the property, including the diamonds?

(Counsel for Knowlton objects to this method of showing the contents of the former agreement, which counsel Hanbury says was destroyed.)

Q. Did it also provide that you were to assume the payment of certain liens and charges on the Boston property?

(Same objection as before.)

715 A. I think so.

Q. Then in all respects the original paper, marked Exhibit "N" and produced by you and attached to your deposition, contained in substance the same as the agreement that you wrote, except the $500 forfeiture clause?

A. This — the same in detail that was there. I don't think it had the numbers of the land.

Q. What did you do when you got through your visit on the morning of the 8th of September, 1882—when you produced this famous memorandum of agreement?

A. I think we went down to your office in the forenoon.

Q. Didn't you then, after a couple of hours, adjourned and go to dinner, and then meet again?

A. I don't remember.

Q. Did she sign the agreement presented by you on the morning of the 8th of September?

A. No, sir.

Q. Had you already signed the agreement?

A. I don't remember.

Q. Are you sure you don't remember?

(Counsel for complainant instructs the witness not to an-
716 swer another question touching the contents of that memorandum.)

Q. You met her in the office of Rorke & Son in the afternoon?
A. I don't remember the afternoon.
Q. You met by appointment at a certain hour?
A. Yes; I think so.
Q. Do you remember the hour fixed?
A. No.
Q. Did you come together to the office of Rorke & Son?
A. I think not.
Q. Who arrived at the office first?
A. She was there *who* I got there.
Q. What was done in that office?
A. Articles of agreement were written by your father.
Q. Was your agreement there present and considered?
A. I think so.
Q. Did you show M. A. Rorke or any member of that firm your memorandum of agreement on the 8th of September?
A. He had the memorandum, but whether I showed it to him I don't know.
Q. Was it the same one you had shown her that morning?
A. I think so.
—. Who presented that memorandum of agreement prepared by you to Mr. Rorke?
717 A. I don't know.
Q. Didn't you there say, in the presence of M. A. Rorke, that you didn't desire any expense; therefore you had drawn up this agreement?

(Objected to as immaterial.)

A. I don't remember.
Q. Did you throw out in any form of words any intimation that you did not desire any expense in this transaction?

(Objected to as immaterial.)

A. I don't remember such conversation, if any.
Q. Didn't you in some form of words decline to be at any expense, upon the ground that you could draw as good paper as any one?
A. I said I could draw the papers.
Q. What did you say to Rorke?
A. I said that I could draw the papers.
Q. All that was said between you and Mrs. Hanbury, in the presence of Mr. Rorke, on the 8th day of September, 1882, and the substance of your agreement, is sanctioned in the paper marked Exhibit "N?"
A. No, sir.
Q. What else was said outside of that agreement?
A. There was a good deal of conversation.

718 Q. Was there anything that was agreed upon concerning the exchange of property that is not contained in this contract made and executed at that time in the presence of Rorke?

A. Yes; that agreement is entirely different from the memorandum I took to the office.

Q. What objection was raised to your memorandum of agreement by M. A. Rorke?

A. I don't remember.

Q. Did your memorandum contain a description of the property?

A. Perhaps that was not in it.

Q. Was that not one of his objections?

A. I think he said there was an error concerning the number of feet.

Q. During the making of that agreement were you not sent for your deeds in order to get a correct description of your property, and didn't you come back to the office with an abstract?

A. I was sent for a deed, but not because it was strictly necessary.

Q. Did you go for the deed?

A. I brought the deed or an abstract.

Q. You brought one deed and an abstract; is that not it?

A. I don't remember.

Q. How long were you away?

719 A. I suppose half an hour or an hour.

Q. Did you at any time that day have a conversation with M. A. Rorke, at which Mrs. Hanbury was not present, prior to the making of this agreement for exchange?

(Objected to as immaterial.)

A. I think not.

Q. Are you sure of that?

A. I can't be positive.

Q. Do you recollect your stating upon that occasion about your right to use the north wall of the building and that you would not sign anything unless your right to that use was inserted?

A. I spoke upon that subject; I think I wished to have that in the agreement and she answered that it was all right.

Q. Didn't you insist upon its being in the agreement, Exhibit "N?"

A. I think that is the paper I spoke of.

Q. Didn't you insist that before you signed this paper you should have this statement about using the north wall of one of the buildings in the agreement?

A. Yes; it is in and was so stated.

Q. Did you then and there agree upon what liens were upon the Boston property?

A. No, sir.

720 Q. Didn't you call a limitation or statement to be inserted in the agreement that the sum of $1,000 was agreed upon as

the extent of the liens upon the Boston property which was to be assumed and paid by you?

Counsel for Knowlton objects to the question on the ground that whatever appears in the contract we stand by.

Counsel for complainant objects to any testimony as to *to* the contents of the agreement, because the agreement itself is the best evidence of what was made.

Counsel for defendant, Anna Hanbury, simply desires to show all the facts as they occurred just prior to the making of the agreement, inasmuch as fraud in the making thereof is insisted upon in this case.

Q. How did the sum of $1,000 come to be mentioned in the original contract, made on the 8th day of September?

A. That agreement was made and talked over before we went to Rorke's office.

721 Q. Was that put in the agreement in pursuance of your previous agreement?

A. It was.

Q. Did you find liens exceeding the sum of $1,000 upon the Boston property?

A. No, sir; except you count the $500 I gave her.

Q. Did you find her representations in respect to the $1,000 agreed upon as a lien correct?

A. I didn't understand there was $1,000 that were liens.

Q. It was agreed upon that that much was to be paid by you?

A. It was, in a certain manner. The agreement was that the mortgage on the Boston property was $800, and $200 was to be paid by me. Part of the $200 was to pay the Blaisdell claim, and then whatever taxes, if any, for the past year, and whatever sum remained was to be paid to Cottrell.

Q. Was there any agreement that you were to pay more than $1,000?

A. I was to give her the diamonds.

Q. After making this agreement did you get one part of it?

A. Yes.

Q. And she another?

A. I think so.

722 Q. You both signed, sealed, and acknowledged it?

A. I think so.

Q. What did you do afterwards towards carrying out the contract?

A. Caused abstracts to be made.

Q. Did she ever give you an abstract?

A. Yes; she sent out a paper to me.

Q. How soon did she give you the abstract?

A. Ten days, I imagine.

Q. How soon did you submit abstracts for the Winthrop Place property?

A. About the 26th of September.

Q. When did you give that abstract to her counsel?

A. That day.

Q. Were there any objections raised to your title that had to be set right?

A. I don't remember any.

Q. Were you not required to produce documents as a discharge in bankruptcy?

A. I don't think so; I think that was shown on the abstract.

Q. Were you required to produce or make any statement showing that you were unmarried?

A. That was in the deed.

Q. How did that come to be in the deed.

A. I think Rorke asked me the question and I answered it.

723 —. Didn't you require Mrs. Hanbury to produce a certain document from Boston—in other words, a decree of divorce?

A. I don't think I ever asked her for it, but I think she voluntarily showed me the decree.

Q. Didn't you ask M. A. Rorke as to how she was situated in that respect and ask him and require him to ask her for a certificate?

A. I don't remember.

Q. Did you have any talk with him about that?

A. I don't remember.

Q. Who examined the title for you to the Boston property?

A. I did.

Q. Didn't you have counsel?

A. I don't remember of any.

Q. Are you sure you did not have anybody to advise you?

A. I am not sure; but I think not; perhaps Mr. Rorke advised me; I think he looked at it.

Q. He did not look at it as your attorney?

A. I think not.

Q. Did he ever at any time act as your attorney?

A. No, sir.

Q. Did you take the abstracts to your friend Shields.

724 A. I think not.

Q. Did you procure counsel's opinion touching the abstract of the Boston property?

A. I think not; unless I showed it to Mr. Munn, my present counsel; I am not sure I did not.

Q. He was then your attorney?

A. Yes.

Q. When did you meet to exchange deeds in pursuance of this contract?

A. On the 28th of September.

Q. Did you carry out your contract, Exhibit "N," in all respects?

Objected to.

A. I think not.

Q. You gave a deed of the Winthrop Place property?

A. Yes; I signed the deed.

Q. And you got the deeds of the Boston property?

A. Yes.

Q. What did you do after you got the deed?
A. There was only one.
Q. What conversation had you with Mrs. Hanbury or Mr. Rorke at the time you exchanged deeds?
A. There was considerable talk, but I don't remember all of it.
Q. Have you no recollection?
A. I know there was considerable talk, but what it was I
725 don't remember; there was talk about the encumbrance.
Q. Was there any talk about your taking the Boston property or what you was going to do with it and how long you were going to hold it?
A. I don't think so.
Q. Is that all that occurred at the time of the exchange of the deeds?
A. No; there was a good deal of talk about the papers and such things just before the delivery of the deeds, and we talked about the encumbrance on the Boston property and on the Winthrop place property.
Q. What was the talk about the encumbrance on the Boston property?
A. We had agreed before that agreement was made as to what we wished and what we should do concerning this encumbrance.
Q. In looking over the agreement "N" I find that it provides for an exchange of deeds between you interchang-able. How was it that you gave two warranty deeds and received but one on the Boston property?
A. That was Rorke's idea as to to the way it should be done.
Q. Why was it done?
726 A. He advised it. I knew it and she knew it.
Q. Why were these sums of money stated in the deed instead of its being stated that it was an exchange of property?
A. I don't know. I suppose that is customary?
Q. Did he tell you this had been inserted in the deed before its execution?
A. Yes, sir.
Q. Who asked Rorke to put in the money consideration?
A. I think he put it in on his own motion.
Q. Did you make any suggestion upon that point?
A. Yes, sir; I did. I suggested that the amount inserted as a consideration should be the same amount that was inserted in the deed that she had for the Boston property.
Q. What was the amount inserted in the deed from Mrs. Hanbury to you?
A. It was the same in both deeds—$21,000.
Q. What next occurred after the exchange of deeds? Did you slumber all night over the exchange?
A. I don't know.
Q. You called upon her on the evening of the 28th of September?
727 A. I think so.
Q. Your buisness relation- had been ended?

A. No; they had just commenced.

Q. Did you surrender her her diamonds on the 28th of September?

A. I don't remember.

Q. Didn't you give them right back to her when you got a deed?

A. Perhaps it was two or three days afterwards.

Q. Didn't she go home with the diamonds in her pocket?

A. I don't think so.

Q. What other money did she owe you after the diamonds were surrendered on the 28th of September?

A. I don't think she owed me anything. There were two notes—one $400 and one $100.

Q. Did you ever have any other dealings with her after the 28th of September?

A. Yes.

Q. Did you loan her a single dollar after you received that deed for the Boston property?

A. Yes; $175, I think it was.

Q. When did you loan her that?

A. In a few days.

Q. What security did you take?

A. Only a note.

Q. Has that since been paid?

728 A. Yes; into court in cash.

Q. Has it been paid in full?

A. Yes; the money was deposited in court.

Q. Did you take it?

A. Yes.

Q. Has there been any transaction between you, in the way of loaning money, since the last one mentioned by you?

A. There was a furniture transaction.

Q. Has she borrowed any money since the $175?

A. No.

Counsel for complainant objects to all the testimony as to the $175 as being no part of the examination-in-chief.

Q. When did you next see her after the exchange of deeds?

A. The evening after the exchange.

Q. Who else did you see?

A. A servant girl.

Q. What took place then?

A. We talked about the leases, tenants, property, and various other things.

Q. Did you give her advice and counsel about the tenants?

A. I told her what I thought of things.

729 Q. Did you tell her that you had built this house?

A. Yes; I told her.

Q. Had you up to that time told her that you were a carpenter and builder?

A. Yes; she knew that I had built No. 18.

Q. What else took place on the evening of the 28th, after you got through giving her advice about the tenants?

A. I guess that was long enough, for it was rather late then—after ten o'clock, I think.

Q. Was there any other conversation, except about the care of the West Side property?

A. She asked if I would collect the rents, how much the property would pay, and various things about the transfers of the lease.

Q. Is that all that occurred?

A. Yes, sir.

Q. During the interview on the 28th of September who else was present?

A. I decline to answer again.

Q. When did you next see her.

A. The next day, about some furniture.

Q. Was anything said about the real estate at that time?

A. I don't remember of anything.

730 Q. What was said between you and her on the morning of the 29th?

A. It was about some furniture in the house 1328 Michigan Ave.

Q. Did any of that conversation turn upon real estate, either here or in Boston?

A. I don't think so.

Q. Did she speak then of a loan of money?

A. I don't remember.

Q. When did you next see her?

A. The next evening; I don't know as it was in the evening; I think it was in the day-time.

Q. When you paid these evening visits didn't you slick up a little?

A. No, sir; there was no difference, except upon one occasion when I went there with an express wagon I had on a knit jacket instead of my coat.

Q. Did you see her on the evening of the 29th?

A. I don't remember.

Q. When did you next see her after the 29th?

A. On the 30th, I think.

Q. What took place then, and where was it?

A. It was in her parlor, at 1328 Michigan Ave.

Q. Is that the time Mrs. Martin was there?

731 A. Yes; she was there and seemed to be a friend of Mrs. Hanbury.

Q. What time did you call there?

A. In the evening.

Q. Was that a business interview?

A. Yes; concerning a loan from me to Mrs. Hanbury.

Q. Was there any conversation then upon real estate matters?

A. There was some conversation between Mrs. Hansbury, Mrs. Martin, and myself; we talked about Mrs. Martin making a trade with Mrs. Hansbury, and it seems that they were not very well sat-

isfied with some trade that was made with an agent; some agent seemed to have got the best of them and they were explaining it to me.

Q. Was there any talk about the property on Winthrop Place?

A. Yes. Mrs. Hanbury said, "I don't like agents. In my exchange with Mr. Knowlton no agent had anything to do with it, and Mr. Knowlton took my statement about the property and had never seen it."

Q. Was the Winthrop Place property spoken of at this visit?

A. Well, I think Mrs. Hanbury and I talked about its management.

Q. Did Mrs. Hanbury make any remarks about the condi-
732 tion of the house?

A. No.

Q. Did she at any time afterwards or before?

A. She complained once and said the tenants wanted her to do some repairs and fix the front of the house.

Q. Did you ask her for any letters of introduction to any persons in Boston at that interview?

A. No; nor at any time.

Q. Did you ask for any certificate as to the value of this property?

A. No; not in any shape or manner.

Q. At any of your visits to Mrs. Hanbury's, after this exchange of deeds, did you ask her for any paper or writing that the Boston property was worth 10 cents per square foot, because it had been sold to you for that?

A. No.

Q. Did you ever get any paper from her addressed to parties in Boston?

A. Yes.

Q. When?

A. About the 3rd of October.

Q. Have you now that paper?

A. No, sir.

Q. Can you produce it?

A. No.

Q. Is it within your possession, custody, or control?
733 A. No, sir.

Q. What was it?

A. An introductory letter, which I gave to Bamford.

Q. What did you ask her to state in that letter?

A. I didn't ask her to state anything, and did not ask her for the letter.

Q. Did you ask for any letter of introduction to parties in Boston?

A. No, sir; never.

Q. When did you next see her after the 30th of September?

A. The 2d of October, at her house.

Q. Who was present?

A. No one that I remember.

Q. What did you go there for?

A. To attend to business concerning the Winthrop Place property, about tenants' leases, insurance, &c.

Q. Did you offer to be her agent for that property to collect her rents and save her the trouble?

A. I told her that I could do it.

Q. Did you offer to procure insurance?

A. Yes; she spoke of it and asked me to.

Q. Were you then solicitor for insurance?

A. No.

734 Q. Did you ever make a commission from her for procuring insurance?

A. I think not.

Q. When you get out insurance for customers isn't it customary to get part of the premiums?

A. Yes; about 5 per cent.

Q. That loan of $175, did you pay all the money to her?

A. I don't remember.

Q. Was there any conversation touching the Boston property on the 3rd of October?

A. No, sir.

Q. When did you leave for Boston?

A. The evening of the 3rd of October.

Q. What time a day was it you saw her?

A. In the afternoon.

Q. You stated in answer to a question put to you by Mr. Munn the other day that during these dealings with Mrs. Hanbury you had never told her of the existence of your sister, Mrs. Hoyt, or that she had any interest in the Winthrop Place property?

A. I think I stated that I don't remember of any conversation of that kind.

Q. I will ask you if, from the time you first made the acquaintance of Mrs. Hanbury up to the time of your departure for

735 Boston you ever mentioned the name of your sister, or that any other person than yourself had any interest in the Winthrop Place property except as to the mortgage.

A. I think not.

Q. Please answer yes or no.

A. To the best of my remembrance, I should say no.

Q. How many interviews did you have with Mrs. Hanbury after your return from Boston?

A. Three or four.

Q. How long did you remain away?

A. I went about the 3rd and returned about the 27th of October.

Q. How long did you remain in Boston?

A. About a week.

Q. That brought you down to about the 10th of October. Now, where were you between the time you left Boston and your return to Chicago?

(Objected to as new matter.)

A. On the road, visiting my brother and friends.

Q. Did you visit the complainant?
A. Yes.
Q. How soon after your arrival in Chicago did you visit Mrs. Hanbury?
A. I arrived on Friday, and the next Monday evening I called upon her at her residence.
736 Q. Who was present?
A. I don't know; a boy or young man.
Q, What was your object of going there upon that occasion?
A. To see if I could get her to trade back.
Q. Didn't you then and there offer to become her agent for the West Side property?
A. No, sir.
Q. When did you next see her?
A. The next evening.
Q. What did you go for?
A. For the purpose before stated.
Q. Who was pre-nt?
A. No one.
Q. What was said?
A. The first evening that I called there was no conversation of consequence for the reason that she was going out, and I think she said I should call the next evening.
Q. And you found her there then?
A. Yes.
Q. What occurred.
A. I told her that I wished to make another trade with her; that I wished to trade back; but she didn't seem to be inclined to do so.
Q. Was there any social talk?
A. No; it was all buisness—straight buisness.
737 Q. When you met her the first evening did you ask her for the pleasure of her society the next evening?
A. I didn't ask her for the pleasure of her company; never did anything of the kind in any manner, and no social relations ever existed in any form.
Q. On the Monday when she said she was going out and was obliged to shorten your pleasant interview, did she suggest the next evening.
A. I think so.
Q. She said she would be happy to see you?
A. Yes.
Q. Didn't you ask permission to call upon her?
A. No; I don't think so.
Q. Didn't you suggest calling the next evening?
A. She said she would be home to-morrow.
Q. Of course, you said you would come?
A. I don't remember. I suppose so.
Q. Didn't you ask if you could call the next evening?
A. No, sir.
Q. Did she give you permission to call the next evening?
A. I think she asked me to call.

Q. Did you call?

738 A. Yes, sir; and she asked me to, because she wanted to know something about the house at Winthrop Place?

Q. Did you go there upon this occasion for the purpose of providing her with a hat-rack or any occasion?

A. The house that she took had not been fully furnished when she went in there, and she had to buy many things. No; I did not go for that purpose. I had a lot of furniture, and I told her I could sell her some things, perhaps, cheaper than she would have to pay for the same at other places, and she told me what articles she was in need of which I had.

Q. Was you there for that purpose?

A. Yes; to provide her what she needed.

Q. One of the things you provided her which she was in need of was a hat tree?

A. A hall tree, pillows, and some few household things.

Q. Did you suggest the pillows?

A. No; she told me what she needed.

Q. And you furnished them?

A. Yes.

Q. Did she pay you for them?

A. Yes.

Q. Was that after the 28th of September?

A. Yes; I think so.

739 Q. In discussing the furniture arrangement did your conversation turn upon social matters?

A. No, sir.

Q. All these visits of yours to Mrs. Hanbury reached from after the negotiations were declared off, on the 21st of August, up to about the 27th of September, and were purely business visits?

A. Yes.

Q. What was the result of your visits after your return from Boston and before the filing of your bill; did she ever take back the property or did she decline to do so?

A. She declined.

Q. What did you do on your arrival at Boston?

A. I called on Mr. Cottrell the next day after I arrived there.

Q. Did you present any letter to him?

A. No, sir.

Q. Did you present any letters given to you by her to parties in Boston?

A. She sent a letter to Bamford.

Q. Did you deliver it to him or retain it?

A. I delivered it to him.

Q. That is the letter which contained the statement referred to by you in your affidavit that this property was purchased for 10

740 cents per square foot?

A. Yes.

Q. When did she give you that letter?

A. On the evening of my departure from Chicago.

Q. What did you say when you asked her for that letter?

A. I didn't ask her for it.

Q. Was it voluntary on her part?

A. Yes; she told me a day or so before she wished me to be there and get the letter.

Q. Didn't you reject the first letter and then ask her to write another?

A. There was no first letter written; she gave me a letter of introduction.

Q. Did you say to her, in substance, that you desired a statement from her as to what you had paid for the Boston property?

A. No, sir.

Q. Did you take a paper from any person containing a statement as to the value of this property or what she had paid for it?

A. The only statements I ever got or knew of were the two letters I have before mentioned, in answer to my two letters of the 12th.

Q. Give the substance of the letter by Mrs. Hanbury and given by you to Bamford.

741 A. It was addressed to Bamford, and first introduced Mr. Knowlton and said Knowlton wants to pay off the encumbrance on the lots, and any favor you can do for him or assist him I trust you will do for my sake, and when you know him better (there was a clause extending him the right hand of fellowship); the lots I have sold to him for 6 cents per foot which cost me 10 cents per foot. It was signed yours very resp-tfully, Anna Hanbury.

Counsel for complainant objects to the testimony as to the contents of the letter because the letter is the best evidence.

Q. Please state if at the time you got that letter from her there was any talk about the terms of 6 cents or 10 cents a square foot.

A. There was no conversation concerning the letter about 6 cents or 10 cents a foot or anything that the letter contained more than it was an introductory letter to her agent, Mr. Bamford.

Q. What money did you pay out on account of the encumbrance assumed by you on the Boston property?

A. $100 to Cottrell.

Q. Did you file your deed for record in Boston?

742 A. Yes.

Q. When did you go into bankruptcy?

(Objected to as immaterial.)

A. On the 29th day of August, 1878, I filed my petition.

Q. While you were in bankruptcy did you collect the rents for the Winthrop Place property?

A. No, sir.

Q. Were the houses then built?

A. Some of them.

Q. When did you receive your discharge in bankruptcy?

(Objected to as not the best evidence.)

A. I don't remember.

Q. How long were your bankruptcy proceedings pending?

A. One and a half years.
Q. Did you ever tell her that you were a man of means?
A. No, sir.
Q. Did you ever tell her that you were worth $60,000 or any other sum?
A. No.
Q. Did you ever tell her that you were well off and could afford to keep these Boston lots upon your hands for many years to come?
A. No.
Q. You never told her anything about that?
743 A. No.
Q. Did you ever make a statement of that kind in the presence of M. A. Rorke, that you were a man of some means, and that you could afford to keep unimproved property for a series of years?
A. No; I don't think so.
Q. Can you now answer yes or no?
A. To the best of my knowledge, I never made such a statement.
Q. Did you ever make any statement which in substance amounted to that?
A. There would have been no substance about it, but all imagination if I had.
Q. Did you ever make any statement to M. A. Rorke as to your ability to keep unimproved property for a series of years—this Boston property?
A. I don't think so.
Q. Did you ever make a statement like this, that you could keep these Boston lands for a number of years, as you were a man of means?
A. No.
Q. Did you ever tell M. A. Rorke that your bankruptcy was a mere blind, in order to get rid of a claim of your former wife?
A. I think I told him I always paid my honest debts.
744 There was some trouble between me and a former wife of mine, and I may have told him; I don't remember.
Q. Did you tell him that was the only reason you went into bankruptcy, that it was to get rid of a claim of your former wife?

(Objected to as immaterial.)

Q. At this time M. A. Rorke was acting as Mrs. Hanbury's counsel, when you visited his office?
A. I believe so.
Q. Who introduced you to Rorke?
A. Mrs. Hanbury, I suppose.
Q. Did Mrs. Hanbury ever tell you that you could not sell this property at present?
A. No, sir; she never told me any such thing.
Q. Did she ever tell you that you could not sell these lots at any reasonable figures at present, or at your figures?
A. She always spoke highly of them and praised them up.
Q. Did she speak of them as being of great prospective value in the future?

A. Yes, sir.

Q. Did you ever notify Mrs. Hoyt that you had made a sale of the Winthrop Place property prior to the filing of your bill in the State court?

A. No, sir.

745 Q. Did you ever tell her that you had invested Mrs Hoyt's money in the Winthrop Place property prior to the filing of your bill in the superior court?

A. No, sir.

Q. You stated in answer to some question that you visited your sister after going to Boston in October last.

A. Yes.

Q. That sister was Mrs. Hoyt, the complainant?

A. Yes, sir.

Q. Did you have then and there any accounting with her concerning the rentals spoken of?

A. No, sir.

Q. Was your visit for any other purpose than a social visit to your sister?

A. No, sir.

Q. Were you in the habit of sending monthly, quarterly, or semi-annual statements of your receipts and disbursements on account of the Clark St. property during the last 4 or 5 years?

A. No.

Q. Have you ever had an accounting with her concerning the rents for the Winthrop Place property at any time?

A. No, sir.

746 Q. Did you ever tell Mrs. Hoyt that you had made an investment for her in mortgages in Chicago prior to the filing of your bill in the superior court?

A. I don't remember, but I think she knew about the time of buying that paper, but I don't think she knew about the location of the property.

Q. Will you swear positively that she knew, prior to the filing of your bill in November, that you had invested her money in the trust deed on No. 20 or 22 Winthrop Place?

A. No, sir.

Q. You won't swear positively?

A. No, sir.

Q. At the time of the exchange of property on the 28th of September had you mentioned the name of the person who held the mortgage or trust deed on the property conveyed to Mrs. Hanbury?

A. I think not.

Q. Didn't you tell her then and there that you were the owner of the paper?

A. No, sir.

Q. How long did you hold that paper—the mortgage for $1,800?

A. I never held it at all.

Q. How long was it in your possession—it and the note?

A. I don't remember.

747 Q. Was it in your possession, custody, or control on the 28th of September last?
A. I had control of it.
Q. Didn't you state to Mrs. Hanbury or M. A. Rorke that you had control of that mortgage?
A. Yes.
Q. Was the paper then overdue?
A. I think so.
Q. Were you in a position to sell or assign that paper on the 28th day of last September?

(Objected to as calling for a conclusion of law.)

A. No, sir.
Q. Where was the note and trust deed on the 28th of September?
A. I don't know.
Q. Didn't you show it in the office of Rorke & Son?
A. I don't know.
Q. Did you tell them where it was and who had it?
A. I don't think I did.
Q. Did you tell them who had control of it?
A. Yes.
Q. And that it was overdue?
A. Yes.
Q. Do you remember the fact of its being mentioned that the trust deed was overdue?
A. Yes, sir.
748 Q. Wasn't it then in your possession?
A. I think not.
Q. Where was it?
A. I think Mrs. Hoyt had it.
Q. On the 28th of September?
A. I don't remember concerning that.
Q. Did you ever send it to Mrs. Hoyt until after the dissolution of the injunction in the other case?
A. I think I did; yes.
Q. Did you have an interview with a gentleman by the name of Baird last fall or in the first part of January?
A. I don't remember anybody.
Q. Did you go to the office of Baird & Bradley on La Salle St.?
A. Yes.
Q. Are you acquainted with any of those parties?
A. Yes; I know both.
Q. Did you pay them any visits along in January last—the fore part of January?
A. No.
Q. Did you send them any papers about that time?
A. No.
Q. Did you direct any papers to be delivered to them?
A. No.
Q. What time was it you sent this to Mrs. Hoyt?
A. I don't remember.

749 Q. Did you ever transfer any papers to her by mail or by express?

A. Yes; by mail.

Q. Was it after filing your bill in the superior court in November last that you sent papers to Mrs. Hoyt?

A. I think not.

Q. You paid for that trust deed, didn't you, $1,800 out of money in your control?

A. Yes; her money. I transacted the business as her agent.

Q. From whom did you buy the lot mentioned in that trust deed?

A. Shields.

Q. How much did you pay for the equity?

A. $700.

Q. At the time you bought it for $700, upon which was the Shields trust deed, you put the property in your own name, didn't you? How soon after that did you pay the $1,800 to Baird & Bradley?

A. I didn't pay it to them.

Q. After you acquired the title to the lot from whom did you purchase the trust deed?

A. I think I purchased it from a man by the name of Kent.

750 Q. In your deed, or was it understood at the time you purchased the equity of redemption that you assumed the trust deed?

A. I think so.

Q. Before you invested Mrs. Hoyt's money in this trust deed did you communicate with her your intention of so doing?

A. No; I did not.

Q. In purchasing this trust deed did you *you* expect to pay the mortgage?

(Objected to.)

Q. At the time you paid the trust deed you were the owner of the property?

A. The title stood in me.

Q. At the time you bought the mortgage the mortgage was then due?

A. No.

Q. When was it due?

A. In about a year or two.

Q. Didn't you pay that mortgage for the interest; didn't you pay, in addition, a premium in order to let you have the interest in advance?

A. I don't think so.

Q. How much was due upon the trust deed upon the face of the papers?

A. $1,800.

751 Q. Didn't you purchase or pay, rather, the money for the trust deed on No. 20 about the same time you paid the money on No. 22?

A. At different times.

Q. During your proceeding in bankruptcy did you keep any money yourself?

A. I didn't have any to keep.

Q. How did Mrs. Hoyt come to hear of the property about being sold by the master *for* 394 Clark St.?

A. I don't remember how she came to hear of it.

Q. Did you notify her of any intended sale?

A. Yes.

Q. Were you at the sale?

A. Yes.

Q. Did you buy in the property?

A. No, sir; I think not.

Q. Who did?

A. I think Brookfield.

Q. How did that property come to be sold—under what sort of mortgage or title?

A. I don't think I know.

Q. Who owned the encumbrance on that property?

A. Brookfield claimed to be the owner, and I claimed an interest. My name was put in the papers, but I didn't suppose it amounted to anything.

Q. Were you not, prior to the sale by the master, in pos-
752 session of these premises as your own?

A. No, sir.

Q. Were you not collecting the rents of some portion of the premises on Clark St. at the time of the foreclosure?

A. I had a lease on the premises.

Q. Didn't you have a ground lease?

A. I don't remember.

Q. Where is that lease now?

A. I don't know.

Q. Did you produce before the master the other day all the papers you had relating to the premises on Clark St.?

A. I think so.

Q. Didn't you tell the master and Mr. Hill that you had not the lease and could not produce it?

A. I think so.

Q. Who was tenant under that lease?

A. I was.

Q. Didn't you own the buildings?

A. No, sir.

Q. Didn't you have an interest in them?

A. No, sir; I may have had some sort of an interest—at least, my name appeared in the papers.

Q. Were you not the owner of the equity of that leasehold which was foreclosed?

A. Brookfield claimed to be the owner.

753 Q. Didn't you claim to be the owner at or before the foreclosure?

A. I don't think I did.

Q. Were you in charge before the foreclosure?

A. I had a lease of the building before the foreclosure from the receiver.

Q. Where did the money come from that paid the master at the time of the sale to Mrs. Hoyt?

A. Came from her.

Q. Was there any communication with her at the time of the master's sale?

A. I don't know, but I think so.

Q. Did you pay for that property after bidding it in for her?

A. It was not bid in for her. I think a man by the name of Brookfield bid it in.

Q. Who was the certificate issued to?

A. Emily Hoyt; her money paid for it.

Q. Who was Brookfield?

A. He was the owner of the ground on which the buildings were placed.

Q. What was the name of the receiver when you had charge of the buildings?

A. H. M. Marshall.

754 Q. Notice in the master's deed your name appears as a defendant in the case therein recited; were you at the time of filing this bill in possession of the premises?

A. I don't think so.

Q. Now, was not the whole object of putting the Clark-St. property in the name of Mrs. Hoyt to protect the property from your wife?

A. No.

Q. Was it not from liabilities which you expected would come upon you that you procured the certificate to be issued to Mrs. Hoyt?

A. No, sir.

Q. How did Brookfield come to buy in the property; was it not at your suggestion?

A. No, sir.

Q. You and he are quite friendly at this time, are you not?

A. No.

Q. Look at the paper now shown you and state what it is.

A. It is a letter of mine—at least, my signature—written under the date of August 12th, 1882.

Q. Was this letter used in any other suit?

A. I think it was; in my injunction suit.

Counsel for the defendant, Anna Hanbury, offers the said 755 letter in evidence, the original being filed as Exhibit "4" in support of the answer of Anna Hanbury in the suit in the superior court of Cook county.

(A copy of the letter is made Exhibit "1" at close of this witnesses' testimony.)

Counsel for the defendant, Anna Hanbury, introduces in evidence a copy of the letter signed by the defendant Knowlton, dated Au-

gust 12th, 1882, which letter is attached to the exhibits in the case referred to.

(A copy of the letter is made Exhibit No. "2" at the close of the witnesses' testimony.)

Q. What representation, if any, did you make to her regarding the costs of the Winthrop Place property or any portion thereof at or just before the exchange?

A. I don't think I made her any particular representations.

Q. Did you tell her that you paid $2,800 in cash for one of the two houses?

A. No, sir.

Q. Did you tell her that the large house—three-story—was worth $8,000?

A. No, sir.

Q. Did you tell her that the lots upon which these houses
756 were built were worth in the neighborhood of $1,000?

A. I said it in a different manner. I said that parties there were asking $1,000 for full-sized lots.

Q. What did you tell her as to the cost of the three-story house?

A. I never told her anything about it more than what the deed shows.

Q. Do you mean to say that the sum mentioned in the deeds given by you to her represented the true value of the property?

A. No, sir.

Q. The values mentioned in the deeds from you to her and her to you were merely nominal?

A. They were inserted by your father at his option.

Q. In all the deeds?

A. Yes, sir; the agreement, as understood by Hanbury and myself, was in accordance with her ideas, and will show the rate; that this property was taken at $20,000 and that property down there was given at $20,000.

Q. This she told you after you had letters from Boston from Heber and Knight?

A. She told me that before, and expressed it more particularly when she showed me the plat.

757 Q. As to the amount of encumbrance on the Boston property, was there any representation made to you by her?

A. She claims that she did not represent to me as I understood it.

Q. The agreement says that you took it subject to $1,000, agreed upon as liens upon the property; now, was there anything erroneous in that statement?

A. The liens were at $800 and $200.

Q. Did you find any liens above $1,000 upon the property?

A. There were liens for taxes which she said she did not care to pay or agree to pay, or something of that kind.

Q. Were there any liens for taxes that were not removed by operation of the Mass. statutes and her exertions?

A. There were liens for taxes.

Q. But they were to be paid out of the $200?
A. Yes.
Q. Didn't you go to Boston with the intention of paying these?
A. Yes.
Q. From the time you first met Mrs. Hanbury until after the exchange did you ever mention the name of Mrs. Hoyt to her?
A. I don't think I did.
758 Q. Did you ever tell her that any person than yourself had any interest?
A. I told her about the trust deed; that I was only agent for another party.

MINER N. KNOWLTON.

George A. Cobb. John A. Rice & Co. Charles C. Hilton.

TREMONT HOUSE,
CHICAGO, *August* 12*th*, 1882.

R. Heber.

DEAR SIR: I address you to enquire the value of Page estate lots—Clarendon Hills, West Roxbury, 29 lots, 199,461 sq. ft., on Beach, Poplar, & Charles Sts.—Nos. 1, 8, 9, 12, 13, 23, 24, 27, 28, 29, 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 78, 79, 80, plan C. J. & J. H. Page, drawn by E. W. Hencke May 12, 1872, recorded in Norfolk.

We thought of realizing on this property, & desire to ask what, in your opinion, would this property bring per lot at an auction sale for cash (say 10 per cent. down & balance in 30 or 60 days);
759 also what would be the largest sum you could negotiate a 3-year loan on the 27 lots, title perfect; would ask if you consider this desirable property to sell; that you could closely estimate its value, or if it would be hard to guess its price at a sale.

An early answer will very much oblige.

Yours resp-ctfully, M. N. KNOWLTON,
394 *South Clark St., Chicago, Illinois.*

George A. Cobb. John A. Rice & Co. Charles C. Hilton.

TREMONT HOUSE,
CHICAGO, *August* 12, 1882.

S. R. Knight & Co.

GENTS: I address you to enquire the value of the Page estate lots—Clarendon Hills, West Roxbury, 27 lots, 199,461 sq. ft., on Beach, Poplar, & Charles Sts.—Nos. 1, 8, 9, 12, 13, 23, 24, 27, 28, 29, 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 78, 79, 80, plan of C. J. & J. H. Page, drawn by E. W. Hencke May, 1872, recorded in Norfolk.

We thought of disposing of this property, and desire to ask
760 what, in your opinion, would this property bring per lot at auction sale for cash (say 10 per cent. down, balance in 30 & 60 days); also the largest sum you think you could negotiate a 3-years loan on the whole, title perfect; would ask if you consider this desirable

property to sell; that you could closely estimate its value, or if it would be hard to guess its price at a sale. Can you tell me if there — sales of any lots in this vicinity of late or any demand or advance?

Please answer at your convenience and very much oblige,

Very respectfully, M. N. KNOWLTON,
394 *South Clark St., Chicago, Illinois.*

Exhibit No. 12, E. B. Sherman, commissioner.

FEB. 24, 1883.

Q. State your name, residence, and occupation.

A. Miner N. Knowlton; residence, 394 South Clark street, Chicago; occupation, carpenter.

Q. How long have you resided there?

A. About six years.

761 Q. Do you know the plaintiff in this suit, Emily Hoyt?

A. Yes, sir.

Q. How long have you known her?

A. About forty years.

Q. Is she a relative of yours?

A. Yes, sir.

Q. What relation?

A. Sister.

Q. Where does she reside?

A. Town of Stamford, Fairfield county, Connecticut.

Q. Is she a married woman?

A. Yes, sir.

Q. What is her husband's name?

A. Alfred Hoyt.

Q. Do you know defendant, Anna Hanbury?

A. Yes, sir.

Q. How long have you known her?

A. Since about July last.

Q. Where does she reside?

A. I think she resides now at No. 1328 Michigan avenue, in this city.

Q. Has Mrs. Hoyt any property in this city? And, if so, state what that property consists of.

A. She has a leasehold property in the city, at 392 and 394 South Clark street.

Q. You admit in your answer that you have been her

762 agent here in the city. How long have you been her agent?

A. About six years.

Q. You have collected rents for her of that property, you admit?

(Objected to unless the authority from Mrs. Hoyt is shown.)

Q. Have you that power of attorney here that is set up in your answer? I would like to see it—and also if you have there any title papers to that property.

Witness produces document No. 183,375, recorded September 5,

1878, in the recorder's office of Cook county, Book 794 of Records, page 605, which is a power of attorney; a copy of which is annexed to and forms a part of the bill offered in evidence, marked Exhibit A.

Witness produces document No. 156,421, dated April 30, 1877, and recorded in Book 696, page 316, being master's deed of Henry Waller, master in chancery of the circuit court of Cook county, to Emily Hoyt.

Offered in evidence and marked Ex. B.

Q. The Emily Hoyt named in this deed is the plaintiff in this case?

A. Yes, sir.

Q. Have you any other title papers of Mrs. Hoyt's in your
763 possession to property here in Chicago?

A. I don't think so.

Q. I think you admit you have been the agent of the property from the date of the power. Were you the agent prior to the execution of the power?

A. Yes, sir; I was agent at the time it was purchased.

Q. That is, from the time of the master's deed?

A. Yes, sir.

Q. Describe what the property is.

A. It is frame buildings.

Q. Describe them carefully, if you please.

A. They are two-story basement frame buildings.

Q. How many of them and what are the numbers?

A. There are two frame buildings and a small store between the two houses—a basement to each.

Q. Those buildings have been occupied all the time since the purchase?

A. Yes, sir.

Q. You have collected the rents for the buildings all the time?

A. Yes, sir.

Q. Can you furnish us with a statement of the rents and vouchers that you have, received, so as to shorten this examination
764 any way? Have you the leases between Mrs. Hoyt or yourself, as her agent, and the tenant or occupant of those premises in your possess-?

A. I have some of the leases; not all.

Q. Have you any of them here?

A. Yes, sir.

Q. Please produce them one by one, so we can identify them.

Witness produces lease dated May 1, 1877, from Emily Hoyt, by M. N. Knowlton, agent, to Benjamin Wiel, from May 1, 1877, to May 1, 1878.

Q. Please examine the signatures to that lease and tell us whose they are.

A. Emily Hoyt, by M. N. Knowlton, agent, is my signature; Ben-

jamin Weal is the signature of the man that signed it and the occupant of the premises.

Q. Do you know the signature?

A. Yes, sir.

Lease offered in evidence, marked Ex. C.

Q. Is Mr. Weal still in possession of that property?

A. No, sir; that is only a one-year lease.

Witness produces lease of the premises 394 South Clark St., dated May 1, 1877, from Emily Hoyt, by M. N. Knowlton, agent, to
765 L. Bermen, from May 1, 1877, to May 1, 1878, which is offered in evidence, marked Ex. D.

Q. Do you know the signature to that?

—. Emily Hoyt, by M. N. Knowlton, is my signature.

Q. The other signature is that of Bermen?

A. I would not like to say. I don't know exactly.

Q. You know him?

A. Yes, sir.

Q. Did you collect rents under that lease from him?

A. Yes, sir.

Q. He acknowledged the lease, then?

A. He paid me the rents. I wish to make an explanation here. At the time the leases were made the numbers of this same property situated in lot 4, block 111, school section, was numbered 394 and 396, and by order from the department of public works or the numbering department of the city they had been changed to 392 and 394, which makes the papers appear different.

Witness produces lease from Emily Hoyt, by Miner N. Knowlton, agent, to Benjamine Weal, May 1, 1878, to May 1, 1879, saloon, known as 396 Clark street, Chicago, as described in the lease.
766 Lease offered in evidence, marked Exhibit E.

Q. And can you identify the signature to that lease in the same manner as the others?

A. Yes, sir.

Witness produces lease from Hoyt to Weal, dated May 1, 1879, to May 1, 1880, of the same premises, offered in evidence, marked Exhibit F.

Q. Do you identify the signature to that?

A. Yes.

Witness produces lease from Emily Hoyt to William Schwendel from May 1, 1879, to May 1, 1880, 394 South Clark street, which is offered in evidence and marked Exhibit G.

Q. And the signatures you identify as signed by the parties?

A. Yes, sir.

Witness produces lease from Hoyt to Weal from May 1, 1880, to May 1, 1881, saloon, 394 South Clark street, which is offered in evidence, marked Ex. H.

Q. These signatures you identify also?
A. Yes, sir.
Q. Have you the ground lease to Mrs. Hoyt?
A. Yes, sir.
Q. Please produce it.

767 Witness produces ground lease from Laura B. Merritt, by attorney, James D. Sherman, to Emily Hoyt, signed by M. N. Knowlton, attorney-in-fact, dated the first day of September, 1880, for lot No. 4, block 111, school section addition to the city of Chicago, and it runs from the 1st day of September, 1880, to the year 1885.

Q. What was the actual date of the lease, if you know?
A. Just the same as it is there—September, 1880. It is a five-year lease.

Lease offered in evidence, marked Ex. I.

Q. This is a ground lease on that property to Emily Hoyt at the rate of $50 a month ground rent; have you paid the ground rent on that property according to that lease?
A. Yes.
Q. You have the vouchers, have you?
A. Paid it before that lease on some other old leases.
Q. On old leases?
A. On old leases.
Q. Have you the old leases?
A. I have not.
Q. Where are they?
A. I don't know where they are.
768 Q. What was the old lease, on the same terms?
A. No, sir; $35 a month, and this is $50.
Q. What was the ground rent at the time when the master's deed was given?
A. Under the old lease, $35.
Q. And continued $35 down to the date of this lease?
A. Yes.
Q. Have you paid all the ground rent, then, down to the execution of this lease?
A. Yes.
Q. Have you the vouchers for the execution of the same?
A. Some of them, sir.

The MASTER: I want to suggest to the counsel that, under the rule of this court, where there is an accounting to be made the rule provides that it shall be presented in debit and credit, so that it will be necessary for Mr. Knowlton to present his account at the same time with the items and date of payment in the ordinary method for the inspection of counsel and the benefit of the master. I make this suggestion so that it may be done at an early stage of the
769 examination and save a great deal of writing and probably much trouble.

Mr. HILL: You have the vouchers down to date, all of them, have

you, and you have a full statement of what you paid out for ground rents?

A. Yes.

Q. And it is a correct statement?

A. Yes.

Q. Have you paid any other moneys out?

A. Yes; I have paid other moneys.

Q. What for?

A. I have paid for water taxes and for insurance. Pursuant to terms of lease all general taxes on this property were paid by the lessor. Q. There are three insurance policies, each from the Buffalo Insurance Company, numbered, respectively, 2334, 2335, 2856, on this property, assuring Mrs. Emily Hoyt.

Said policies offered in evidence, marked Ex's J, K, L.

Q. Now, Mr. Knowlton, you stated that you had an account made up. Is it in such shape that you can submit it to the master?

A. I don't know whether it is exactly in the right shape.

(Witness produces statement.)

770 Q. Mr. Knowlton, what is this an account of?

A. An account of the rents that I have received from that property.

Q. 394 and 396—this property that you have been testifying about?

A. Yes.

Q. All the rents you have received?

A. Yes; from the time I first took charge until the first of February inst.

Q. The present February?

A. Yes.

Q. Does it contain a statement of disbursements?

A. Yes.

Q. Then I will ask you to make this *an* Exhibit M to your deposition. Any objection to that Mr. Munn?

Mr. MUNN: No, sir; only I suppose that the exhibit itself will show the data, but at present you have not shown that he has paid the money, only incidentally.

Q. This exhibit is a correct statement of your receipts and disbursements on account of this property as agent for Mrs. Hoyt?

A. Yes; I have some vouchers that will show payments.

Q. This exhibit purports to be an account of all the rents
771 collected at 392 and 394 South Clark street from May 1, 1877, to February 1, 1883. I will ask you to file with the master for his examination and my examination at leisure, Mr. Knowlton, all the vouchers that you have that you want to submit.

A. The insurance policies I submit as vouchers for the money I paid on insurance; the vouchers for the ground rent and water rent I have here.

Q. I will ask you one question. Give us a list of the occupants of

the buildings at 392 and 394, commencing with the basement; give the amount of rent they pay and the tenants right through.

A. 392, at present, is occupied by William Swendel, the same party that made the lease, and the lease now is a verbal lease.

Q. Is he holding there under the terms of that lease?

A. I don't think so; I think it is a verbal lease at a higher rate of interest than then.

Q. What is the lease—from when to when?

A. It is a verbal lease, from last May until the coming May.

Q. How much per month and when payable?

A. The rent is payable on the first of every month.

772 Q. In advance?

A. Yes.

Q. He occupies the store?

A. Yes; at $28 a month in advance.

Q. That is the store. Now, the basement—is that occupied?

A. Partially occupied.

Q. Who occupied that?

A. Catherine Leutz.

Q. What rent does she pay?

A. The lease is verbal.

Q. What rent does she pay?

A. Two dollars a week?

Q. In advance?

A. Yes.

Q. She occupies the basement of 392?

A. Yes.

Q. Any terms or only from week to week?

A. I don't think there is any terms.

Q. Now, the next floor?

A. The front, a dwelling-room, is occupied by Rachel Stewart.

Q. Does she occupy the whole?

A. No, sir; the front part.

Q. What rent does she pay?

A. Eighteen dollars. The rear of the same floor is occupied by Steinberg.

Q. What rent does he pay?

A. Ten dollars a month.

Q. Is that all of the occupants of 392?

A. Yes; at present.

Q. Now, I think you have said there was a building be-

773 tween these two buildings?

A. Yes.

Q. How is that occupied?

A. Occupied by Abram Mendelson.

Q. What does he pay?

A. $12 a month.

Q. Has he a written lease?

A. I don't think so. I think it is verbal or I should have had it.

Q. Does he pay in advance the first of every month?

A. Yes.

Q. For how long a term is the lease?
A. From the first of last May to the first of the coming May.
Q. Take 394; commence at the basement and go up, and give us the occupants of that and their terms of lease, respectively.
A. 394 at present is unoccupied, except for storage; about $3.00 a month for storage—I mean the basement of 394.
Q. In the basement?
A. Yes; $3 a month for storage.
Q. Who occupies the main floor?
A. Benjamin Weal.
Q. Mr. Weal pays what rent?
A. Pays $45.
Q. In advance?
A. Well, I don't think he does really pay in advance,
774 though that was the agreement—understood to be in advance.
Q. When does his term expire?
A. His lease is verbal—from last May to the coming May.
Q. He occupies the whole of the floor. Any other rooms on the ground floor?
A. No, sir.
Q. Anything in back that is rented?
A. No, sir.
Q. Take the next floor.
A. The front is occupied by Johnson.
Q. What is his first name?
A. I don't really know.
Q. What does he pay?
A. They pay $29 a month or should; it is a little back.
Q. Any more?
A. Yes; other rooms on that floor are occupied by Mrs. Moody, and other rooms by Mrs. Paine.
Mr. MUNN: What does Mrs. Moody pay?
A. Ten dollars a month.
Q. What does Mrs. Paine pay?
A. Eight dollars a month.
Q. Mr. Knowlton, I will ask you to make, for the benefit of the counsel in this case and the master, a detailed statement of all the receipts and disbursements in regard to that property, and then of the rents and parties in possession that you have stated here;
775 make them and verify them and give them to the master, so we can check them up with these.
A. Yes, sir.
Q. Now, Mr. Knowlton, you have an error of $17 on Ex. M., at the bottom.
A. That is only an error that is shown on the other side of the paper.
Q. Show me where it is.
A. The receipts for the sixth year show the sum of the actual receipts to be $1,890.
Q. $1,907.
A. On the other side, in the adding up, there is an error that I

have made, putting it at 1,907. I made an error of $17 changing from one side of the page to the other, and was in a hurry and did not have time to make a new copy.

Q. The net amount that you have received as agent of Mrs. Hoyt, according to this statement, is $8,602.42?

A. Deducting the error of seventeen dollars.

Q. The amount of receipts is——

A. The full amount of receipts—the net amount of receipts—is $8,602.42, less the error of $17.

Q. What have you done with that money?

776 A. $1,800 of that I paid for the trust deed.

Q. What trust deed?

A. The trust deed secured on—I will state that I am willing to make any statement that I am required to in detail, so far as I am able to do so, and anything that can be done I am willing to do.

Q. Seventeen dollars error and $1,800 paid for trust deed. What trust deed was that—on what property?

A. That was paid to the holder of the notes secured by the trust deed.

Q. Who did the trust deed run to? Have you a description of that trust deed; what property is it?

A. Property situated at No. 22 Winthrop Place, in this city.

M. A. Rorke & Son appear on behalf of the defendant, Anna Hanbury, for the sole purpose of objecting to any inquiry as to any alleged disposition by the said Miner N. Knowlton of the moneys which it is alleged he has received belonging to the complainant, Emily Hoyt, and as to any inquiry as to the nature and situation and value of any property, real or personal, which it is claimed

777 by complainant said Knowlton has purchased or improved with any of the alleged moneys received by him for Mrs. Hoyt, if any, so far as the same may relate to the defendant, Anna Hanbury, and the property alleged to have been bought or purchased by her in the complainant's bill of complaint, and so far as the same may relate to the trust deed in the bill of complaint described, upon the ground that the proceedings under this decree by the direction of his honor Judge Blodgett cannot in any way affect the defendants who have not answered; that the appearance of said defendant, Anna Hanbury, is expressly limited for the purpose of making this and other objections, and for no other purpose whatever.

The defendant, Anna Hanbury, also objects, as aforesaid, to the proposed inquiry, upon the ground that the order referring the cause to the master does not direct that the master shall take any evidence which may be attempted to be used as the foundation for an application for injunction and receiver as against the trust deed to Lyman Baird and others described in the bill of complaint as

778 against the defendant, Anna Hanbury, and the property alleged under the bill of complaint to belong to her.

The MASTER: The objection made requires the master only to construe the order of reference, and under this order of reference

the master is specifically directed not only to state the account between the complainant and the defendant Knowlton, but "to inquire fully and particularly what disposition the said Miner N. Knowlton has made of the moneys which he has received belonging to the said Emily Hoyt, complainant, and to further inquire fully and particularly all the nature, situation, and value of any property, real and personal, which the said Miner N. Knowlton has purchased or improved with any of said moneys;" and the master is of the opinion that it is his duty to proceed with such inquiry, notwithstanding that it is provided that proceedings under this decree shall not affect defendants who have not answered. It is for the court to carry into effect this latter clause extending to the defendants who have not answered the protection as to their rights which is given by the closing sentence of the order.

779 Adjourned to 2 o'clock p. m.

FEB'Y 24—2 o'clock p. m.

Q. Just before adjournment, Mr. Knowlton, you were asked in relation to the trust deed. It was stated in your account that you paid $1,800 for the trust deed. Please describe that trust deed.

A. Well, the amount was $1,800.

Q. On what property was it?

A. On property situated at No. 22 Winthrop Place.

Q. In this city?

A. In the city of Chicago, sir.

Q. Do you remember the date of the trust deed?

A. June 25, 1877, I think. I was looking to see if I had a copy, but I have not a copy of it.

Mr. RORKE: I object to the evidence on the further ground that the mortgage itself or a certified copy thereof would be the best evidence.

Q. To who did the trust deed run—who was the trustee?

A. Lyman Baird. The amount was $1,800, which was payable to the order of William H. McKee.

Q. Where is the trust deed now—what became of it?

780 A. I sent it to Mrs. Hoyt after I purchased it for her. I don't know where it is now. I suppose it is in the possession of the trustee, Mr. Baird.

Q. You paid $1,800 out of these moneys for that?

Objected to as before.

A. Yes, sir.

Mr. RORKE: It is understood we object to all this testimony relating to this trust deed or the purchase of the property on behalf of the defendants not served.

Q. What else did you do with these moneys?

A. I paid $600 for a vacant lot, No. 57, in H. M. Taylor's subdivision of block 43, canal trustees' subdivision, of the west half of N. E. quarter, section 17, 39, 14, Cook county.

Q. Did you take the title to this piece of property?
A. Yes.
Q. In whose name?
A. In my own name.

Mr. RORKE: We object to this inquiry for the reasons given above and as affecting any property upon Winthrop Place, in the city of Chicago, and as affecting the incumbrance on $1,800 on part of the property; and the further objection that the witness cannot testify to the contents of deeds relating to this property on Winthrop
781 Place without his laying a foundation for that sort of evidence.

Q. What other property did you buy with these moneys?
A. I bought the house No. 20 Winthrop Place.
Q. What did you pay for that?
A. I think it was $450.
Q. $450 for the equity in No. 20?
A. Yes.
Q. Is that the one that the trust deed was on?
A. No, sir.
Q. What else did you buy?
A. I paid besides that, on that same house No. 20, an outstanding trust deed—something over $1,800.
Q. How much?
A. I think $1,850 or 1,840, or something of that kind.
Q. In whose name did you take the title to that property?
A. In my own.
Q. What other property, if any, did you purchase?
A. I purchased the equity in No. 22 Winthrop Place.
Q. What did you pay for that?
A. About $700 for the equity.
Q. Number 22 is the one the $1,800 trust deed is on?
A. Yes, sir.
782 Q. Any other property that you purchased with Mrs. Hoyt's money?
A. Material to build the house No. 18, but no other real estate.
Q. What improvements did you make at No. 18? Describe them.
A. Built a large dwelling-house having three floors of flats, and a brick barn.
Q. How much of these moneys did you put into that?
A. Put all that was necessary to build it.
Q. When did you make these purchases, respectively?

Mr. RORKE: We make the general objection already made, and object further because the deed itself would be the proper evidence as to the date of the purchase.

A. About two years ago this last summer, 1880, I bought No. 18. In the following fall I purchased the house No. 20, adjoining 18, and during the following winter I bought 22.
Q. As I understand, the title to all this property was taken in your name, and those deeds are of record in Cook county, are they?

A. They are.

Q. Who is in the occupation of No. 22; who was in the occupation of it when you purchased it?

A. Mr. Wm. Linsley.

783 Q. He was the tenant, was he?

A. Yes.

Q. He is in occupaion to-day of the property?

A. No, sir; he is in occupation of No. 20 to-day.

Q. You have leased this property since you bought it, have you?

A. Yes; I lease the whole of it.

Q. State to whom you lease it.

A. No. 18 was leased to E. H. Robb; he was one party, and R. A. Givens and the lower floor to another.

Q. What part did these other two occupy?

A. The first two occupied the two upper floors.

Q. Which one occupied the third floor?

A. Mr. Given.

Q. At what rental?

A. At $22.50 a month.

Q. The second floor?

A. That is occupied by E. H. Robb; the rental is the same. The lease was from May 1st to next May.

Q. Who is in the basement?

A. I forget the man's name?

Q. You can find out his name?

A. I could find out his name.

Q. What does he pay?

A. Eighteen dollars.

Q. Is that all the tenants in No. 18?

A. Yes; there might be other persons in the house, subletting or something like that, but these are the ones the leases are made to.

784

Q. Who is in No. 20?

A. William Linsley.

Q. How about his leasing, and what rent?

A. A verbal lease, and he pays $24 a month.

Q. No. 22?

A. Occupied by C. J. Shields.

Q. That is the gentleman sitting here?

A. Yes.

Q. What does he pay, and what about his lease?

A. A verbal lease. I think he pays $23.

Q. How much of this money did you put into these improvements—Mrs. Hoyt's money—in round numbers?

A. All that was needed. I don't know the exact amount.

Q. Any way of ascertaining the facts?

A. I think I could estimate it, but I have not done so.

Q. I want the fact. I want to know what you have done with this $8,602.42. You have given me the $600, the $450, the $1,840, the $700, and the $1,800.

A. Didn't I give you that I paid the incumbrance on No. 20 of about $1,840?

Q. Yes. Is there any way you can ascertain the exact figures in regard to that incumbrance?

785 A. I don't know whether I can get at the thing or not. I have some memoranda by which I could ascertain exactly, but I am not certain I paid the laborers for building the house and whatever money was required to get ready and build it. My idea, as near as I could guess at it, without looking closely, is it would be somewhere near $3,500; at any rate, there is where that money went to. It went into that house. Whether it was $3,500, more or less, I don't know now.

Q. Have you the original of that agreement?

A. I think so.

Q. Where is it?

A. I think it is in some of my papers not here.

Q. Will you produce it at the next sitting?

A. Yes, sir.

Q. What have you done with this property on Winthrop Place?

A. Transferred it to Mrs. Hanbury.

Q. When did you do that?

A. September 8th, by a written agreement, of which this is, I think, a copy.

Q. Please examine those two papers shown you. In car-

786 rying out this agreement you admitted in your answer you had fallen into controversies with Mrs. Hanbury in regard to this property and in regard to the transfer you made. How is that?

A. Fallen into what?

Q. Into controversies with Mrs. Hanbury in regard to this.

A. Yes, sir.

Q. So that the title, which stood in your own name, is in dispute between you and Mrs. Hanbury?

A. Yes, sir; she played a game on me and defrauded me and told me things which I found were not so.

Mr. Rorke objects to the answer as not responsive and makes the general objection that the dealings between Mrs. Hanbury and Mr. Knowlton cannot be inquired into in this proceeding.

Q. What do you claim in your controversy with Mrs. Hanbury in regard to the transfer of the property to her?

A. I claim that she knowingly represented and stated to me things that were not true.

Q. What were they?

A. They were, first, that her representations of the property

787 were not correct as to where the property is located.

Q. What property?

A. Certain property that was deeded to me in Boston in exchange for my deed and agreement about this property.

Q. You made an exchange of property—this property on Winthrop Place for property which she conveyed to you—did you?

A. Yes, sir.

Q. You claim, as I understand it, that in regard to that property she made certain representations that were untrue.

A. She did.

Q. State what those representations were and what the property is and what it consists of generally.

A. She represented that the property was within a block of the depot at Clarendon Hill, on the Providence railroad, running out of Boston.

Q. Since making the exchange have you investigated the matter to find out where that property is located?

A. Yes, sir; I have been there and investigated it.

Q. What did you learn in regard to it?

788 A. I learned that it was nearly half a mile away from where I supposed it was by her representations.

Q. There is a copy of this agreement between you and Mrs. Hanbury set up in the bill and admitted by you in the answer.

Objected to.

Q. Is that a copy of the agreement that is in the bill and admitted in the answer?

A. Yes.

Mr. RORKE: Is that your handwriting in the bill?

A. Yes. Mr. Hill asked me for the original, and I would not give it to him, but I told him I would give him a copy.

Q. When did you first become acquainted with Mrs. Hanbury?

A. About last June.

Q. State how and when you first formed her acquaintance.

A. I formed her acquaintance from a note that I received from her.

Mr. RORKE: I object to any conversations or any transactions or occurrences between Mrs. Hanbury and the witness being inquired into on this reference on the ground that it is objectionable under the order, and because we are not called upon to answer the

789 charges in complainant's bill.

Q. At the time you transferred the property did you transfer the possession to Mrs. Hanbury—the possession of the Winthrop Place property?

Objected to. Objection overruled.

A. I transferred it a few days afterwards, or a short time afterwards, to Mrs. Hanbury.

Q. Who has been collecting the rents in that property since that time?

A. She, or some one in her interest.

Q. Has there been any change of tenants since the transfer to Mrs. Hanbury?

A. I don't know of any.

Q. Are you familiar with the property since you made the transfer?

A. I think so.

Q. You don't know there has been any change made in the tenancy?

A. I don't think there has been any changes made.

Q. Have you commenced any suits, and, if so, what suit, against Mrs. Hanbury in regard to this transaction?

A. I filed a bill.

Q. In what court?

A. In the superior court of Cook county, chancery side, and
790 obtained an injunction.

Q. Has she commenced any suit against you in regard to the matter; and, if so, what, and in what court?

A. Yes, sir; in the superior court of Cook county against me with others.

Adjourned to 11 o'clock a. m., February 27.

Counsel for Anna Hanbury, who has not answered and who appears solely for the purpose of objecting, desires to state that the order of reference under which the complainant is now proceeding was sought by the defendant, Anna Hanbury, to be modified before Judge Blodgett on Monday, the 26th inst., sitting in chambers, and that the judge ruled that it was unnecessary, inasmuch as any proceedings under this order cannot in any way affect the defendants who have not answered.

Counsel therefore renews the objections heretofore made to this testimony, both general and special, as to any inquiry relating to the ownership of this property or to the trust deed alleged
791 in the bill to be upon part of the property, which is also alleged in the bill to be owned by the defendant, Anna Hanbury, and the appearance of the defendant, Anna Hanbury, is specially to the purpose of making objection.

Counsel for complainant insists that all the objections interpolated into the notes of the testimony taken here are without warrant, and that if the defendant, Anna Hanbury, or her counsel are not to be prejudiced by this proceeding and it does not affect her any way that said objections, each and every of them, are palpable breaches of courtesy extended to the said Anna Hanbury and her counsel in the matter.

By way of reply counsel, objecting on behalf of Anna Hanbury, disclaims any intention to be guilty of any discourtesy towards either master or counsel on either side of this case, but makes these objections at this stage of the case for the sake of saving the right of his client.

Counsel for complainant insists that by the service of the
792 notice for the modification of the order heretofore entered herein the defendant, Anna Hanbury, and her counsel are in court for all the purposes of this case.

By way of answer to the alleged notice produced counsel for defendant, Anna Hanbury, refers to his motion filed in the clerk's office of the United States circuit court in this cause, wherein his appear-

ance is specially limited for the purpose of appearing to modify the order entered February 23, 1883, in this court.

The direct examination of the witness, MINER N. KNOWLTON, was then resumed by Mr. HILL as follows:

Q. This paper you now produce is the original agreement between you and Mrs. Hanbury?

A. The original paper is my signature and hers on.

Mr. HILL: We now make that a part of the record in this case, marked Ex. N.

Q. State what steps were taken and when to carry that agreement out, if any.

A. Steps were taken—I procured abstracts to be made and gave it to her attorney, Mr. Rorke, for examination, and she gave
793 me an abstract or a paper purporting to be an abstract of her lots situated near Boston.

Q. Described in your agreement?

A. Yes, sir.

Q. Were deeds executed in conformity with the agreement on your part and on her part?

A. They were.

Q. And delivered on what day?

A. About September 28 or twenty days afterwards.

Q. You conveyed the property specified in this agreement to her according to the agreement, did you?

A. I did.

Q. And she transferred the property specified therein to you according to the agreement?

A. Yes, sir.

Q. Have you any deeds of this Winthrop Place property to you from any of the parties from whom you purchased? If so, produce them.

A. I have one.

Witness produces warranty deed from Mary A. Shields and Charles J. Shields to Miner N. Knowlton, dated March 24, 1881, and recorded in the recorder's office of Cook county March 25, 1881, in Book 1050 *or* Records, page 297, conveying lot No. 2 of McKee's
794 subdivision, being the premises No. 22 Winthrop Place, marked Exhibit O.

Q. Have you any other papers relating to that property?

A. I don't think so.

Q. The property No. 20, then.

A. I have copies of deeds.

Q. I want deeds to you—trust deeds or anything else of that kind.

A. I have a trust deed I paid off on No. 20 Winthrop Place.

Witness produces trust deed, dated June 25, 1877, between Blanche D. McKee and William H. McKee and Lyman Baird, trustee, on the premises No. 20 Winthrop Place.

Offered in evidence, marked Exhibit P.

Q. This is the deed you testified to that you paid $1,830 or 1,850 for?

A. Yes, sir.

Q. Whose money paid for that trust deed?

A. Mrs. Hoyt's money—that is, on No. 20. Mrs. Hoyt's money paid for that trust deed and it was released.

Q. Now, as I understand you, the trust deed of No. 22, which you stated you purchased and sent to Mrs. Hoyt, was like that
795 one in all essential particulars, except it was on No. 22 instead of 20?

A. I think it was.

Q. Please examine the articles of agreement at the words "except an incumbrance of $1,800 on part of said premises known as No. 22 Winthrop Place, Chicago." State whether or not that refers to the trust deed which you sent to Mrs. Hoyt.

A. It does.

Cross-examination by Mr. MUNN:

Q. State how much money you invested in the purchase of numbers 18, 20, and 22 Winthrop Place, including the purchase price of the property, the improvement of the premises, and the paying off of incumbrances, if any.

Counsel for Anna Hanbury urges the general objection and the special objection that *that* it is cross-examination of the attorney's own client.

A. On No. 18 Winthrop Place I first paid $600 and incumbrance on the vacant lot. This is the paper on which I paid $600. Here is the note and the release accompanying the same and described in it.

Mr. MUNN: I will offer this deed of trust from Floyd and wife to Coe and the release of the same and the note attached as
796 Defendants' Exhibit A.

Objected to by counsel for Anna Hanbury for the reasons urged heretofore, and because it cannot in any way affect the defendant, Anna Hanbury.

Q. State what improvements you made.

A. I built dwelling-houses on that lot.

Q. State what it cost.

A. I can't tell exactly, but somewhere about $3,500; maybe a little more or a little less.

Q. Go on and tell about the other lots.

A. I purchased the equity of No. 20 for $450; then I used this money to pay off an incumbrance of $1,800 and some interest, described in that trust deed. No. 22 I paid for the equity with this money, $700; then I purchased for Mrs. Hoyt outstanding trust deed for $1,800 and sent it to her.

Q. What other moneys did you pay for improvements or repairs?

A. I don't remember exactly what amount, but I put new roofs

on both these dwellings and kept them in ordinary repairs,
797 so that they were in good condition for renting. I don't remember the exact amount. I kept up the necessary repairs.

Q. On all the buildings?

A. Yes.

Q. Do any work on them yourself?

A. Yes.

Q. How much?

Objected — by counsel for Anna Hanbury on the ground defendant cannot make money out of alleged trust.

Q. How much did you expend in money, labor, and materials?

A. I have not any items at hand, and can only give a general estimate. Probably $100 in money and $100 in labor is a general estimate.

Q. What was that property worth at the time you exchanged deeds with Mrs. Hanbury?

Objected to by counsel for Mrs. Hanbury as before, and on the further ground that it makes no difference in the exchange of property.

A. We considered its value $12,000, and it paid a monthly rent of $110.

Answer objected to by counsel for Anna Hanbury as not responsive and the knowledge of the witness as an expert in real estate values not being shown.

798 Q. State whether you have dealt much in property of that kind in the city of Chicago, so as to be able to form an intelligent estimate of its value.

Answer objected to as before, and as leading.

A. I know a good deal of the value of property of that description in Chicago. I acted as real estate agent in deeds and transfers of property, and, I think, I understand quite well general values.

Q. From your knowledge of the value of like property in the city of Chicago and its condition at the time you traded and its rental value, state whether your estimate of $12,000 is a reasonable one.

Objected to by counsel for Anna Hanbury because it assumes he has already estimated the property as being worth $12,000.

A. I estimate property of that description by its rental value largely, and at that time it would pay a net income, if properly taken care of, on $12,000, of six or seven per cent.

Q. Now, state how much of that money that you invested in that property was your own, if any.

799 A. I built the house and put my time and labor into them, but I don't think — put my money into them at all; did not have money to invest that way myself.

Q. Then you mean to say that the whole outlay of the purchase of the land and the improvements thereon and the incumbrance taken up by you was the money of the complainant, Emily Hoyt,

except what you say you bestowed by your own labor and time in taking care of it?

A. Yes; it is a fact.

Q. Now, you speak of $1,800 and interest on the same that you paid to the complainant, Emily Hoyt, by assigning or causing to be assigned the incumbrance on the ground and interest. Now, I will get you to state whether you have ever accounted personally to her, so far as to turn over to her in good faith that $1,800 outstanding on the property on No. 22.

A. Yes, sir.

Q. I will ask you to state whether Mrs. Hoyt has demanded, until a short time before the commencement of this suit, any accounting.

A. No, sir.

800 Q. So far as you know, then, you have not, then, refused to account for all the moneys that came into your hands belonging to her?

A. No, sir; I never refused to account.

Q. I will get you to state if you have not acted and intended to act in good faith towards your sister in relation to the use and expenditure of the money that you had in your hands.

A. Yes; always acted straightforward in every outlay; my sister has confidence to know that I would do it.

Q. When you attempted to exchange this property with the defendant, Anna Hanbury, state what your intention was with regard to the property that you obtained from her; if it was what it was represented to be.

Objected to generally, and for the further reason that his intentions cannot be shown except in a bill to reform the deed, and the documents speak for themselves.

Counsel for defendant Knowlton desires to exonerate his client by showing that he acted in good faith to the plaintiff, Emily Hoyt, in all his dealings with the trust fund.

801 Q. State what your object was in exchanging property with Anna Hanbury.

Objected to as before by counsel for Anna Hanbury.

A. My object was I thought it would be a desirable exchange, on about equal values, from her representations.

Answer objected to as not responsive.

Q. What were her representations?

Objected to by counsel for Anna Hanbury.

Adjourned to 11 o'clock, February 28, a. m.

FEBRUARY 28—10 o'clock a. m.

Parties met pursuant to adjournment.

Mr. HILL: I propose to produce the records from the superior court of Cook county, State of Illinois, in the suit Miner N. Knowlton *vs.* Anna Hanbury, general number 84543, term number 2956,

and also the records from the same court in the suit of Anna Hanbury *vs.* Lyman Baird *et al.*, general number 85764, term number 3282, for the purpose of showing the pendency of the suits and the controversies, respectively, between the parties therein, but
802 not for the purpose of making any proof in regard to the facts already set forth in the papers therein, either for or against any of the parties in this present suit in this court in which this inquiry is taken

JOHN WRIGHT, a witness on behalf of complainant, being duly sworn, was examined by Mr. HILL, and testified as follows:

Q. What is your business?

A. Deputy clerk of the superior court of Cook county.

Q. Please state what the papers are.

A. Chancery side; general number, 84543; term number, 2956; Knowlton *vs.* Hanbury. The next one is general number, 85764; term number, 3282; Hanbury *vs.* Baird *et al.* These are the original files in the case.

Q. The papers are within your custody and control as clerk of that court, are they?

A. Yes.

Complainant's counsel produces the bill of complaint from said files in the case of Miner N. Knowlton *vs.* Anna Hanbury, in chancery, filed November 23, 1882, B. M. Munn, solicitor for
803 complainant, in the superior court of Cook county.

Solicitor for defendant, Anna Hanbury, objects to the introduction of the files in both these cases on the ground that the introduction of them cannot in any way affect the defendant, Anna Hanbury, under the order entered of record by Judge Blodgett.

Complainant's counsel produces the bill of complaint and reads therefrom as follows:

"Your orator, Miner N. Knowlton, a citizen, resident of said county, would respectively state and show unto your honors that, in the month of September last, he was the owner in fee"——

Counsel for defendant, Anna Hanbury, objects to counsel for complainant reading any portion of the bill from which he is now reading or any part of the record from that suit unless the whole goes in.

"of the following lots and premises in the city of Chicago, in said county, known as lot fifty-seven (57), in H. M. Taylor's subdivision of block forty-three (43), and lot- one (1) and two (2), in McKee's subdivision of lots 53, 54, 55, and 56, all fronting upon
804 Winthrop Place, in canal trustees' subdivision of the west half and the west half of northeast quarter, section 17, town. 39, range 14 east, of the 3rd principal meridian, in said city, of the value of $12,000, all of which property was free and clear of all incumbrances, except $1,800 on one of the smaller residences, and the rental value of said property was and is $110 per month; that while your orator so owned and possessed said property one Mrs. Anna Hanbury, an unmarried woman, of said county, proposed to ex-

change therefor her property in that part of Boston called Clarendon Hills, in the county of Suffolk, State of Massachusetts, consisting of twenty-seven lots (27)—vacant lots—in the subdivision of C. J. and J. H. Paige, and numbered in the plat of said Page as follows: 1, 8, 9, 12, 13, 23, 24, 27, 28, 29, 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 79, and 80, which the said Hanbury then and there represented to be worth the sum of $20,000 and incumbered by mortgage and liens of $1,000; and to induce your orator to exchange his said property and to pay her the sum of $500 in cash for her
805 said property the said Anna Hanbury represented her property to be worth in the Boston market $20,000; that she actually paid within the past few years the sum of $19,461 in cash; that in the purchasing thereof at that cash price she had made a good investment, in view of their prospective value; that the location thereof was a popular and desirable one—a suburb of the city of Boston and on and near public streets leading direct to the depot and within one block from said Clarendon Hills railroad station. And the said Hanbury then and there assured your orator that she could in a short time obtain the written assurances of business men and real estate dealers in Boston that each and all her representations, as above expressed, were literally true, and thereby save the necessity of a journey to Boston to ascertain the truth of said representations, and she desired him further to confide in her statements and save the expense of such journey."

And your orator states that he then and there, "relying upon her statements, having no knowledge of the property in Boston,
806 and believing her representations and each of them to be true, was thereby induced to accept the offer of said Hanbury, confidently believing that she would not intentionally deceive him and had not deceived him; and afterwards, on or about the 28th day of September last, your orator and said Hanbury exchanged warranty deeds; that he then and there paid the sum of $500 and conveyed said Winthrop Place property, subject only to said incumbrances of $1,800 on one of the smaller residences, and the said Hanbury then and there conveyed to your orator said twenty-seven vacant lots at Clarendon Hills, near Boston, subject only to said one thousand dollars incumbrance, and each party then and there delivered to the other the proper deeds of conveyance."

Your orator further states that since said exchange "he has been to Clarendon Hills, Massachusetts, and carefully examined said property, and has been thoroughly posted as to the condition, location, and value thereof, and finds that said property was and
807 is not worth so much by fifteen thousand dollars as was represented by said Hanbury, and that said property cannot be sold for $5,000 or any other like sum, if clear of incumbrance; and your orator charges that each and all of the material representations of the said Hanbury were and are false and untrue, and that she then and there made said representations, knowing them to be false at the time, with the intent then and there to

cheat and defraud your orator, and has thereby cheated and defrauded him to the extent of $10,000 or thereabouts."

The prayer of the bill is as follows:

"Wherefore, in consideration of the premises, inasmuch as your orator has no adequate remedy at law in the premises, he asks that said Hanbury be made party defendant to this his bill of complaint; that subpœna out of chancery may be issued against her requiring her to appear at the next term of this honorable court and answer all the material allegations of this bill, her answer under oath being expressly waived, and that a writ of injunction may be issued against her restraining her and her agents and attorneys
808 from conveying or otherwise disposing of said Winthrop Place property until the final hearing of the matters expressed in this bill of complaint, and that a receiver may be appointed to receive and take charge of the rents and property of said Winthrop Place property.

"And that upon the substantial proof of the material allegations in your orator's bill of complaint your honors will adjudge and decree that said deeds may be set aside, and that said Hanbury shall reconvey to your orator all the right, title, and interest of said Winthrop Place property and refund the sum of $500 and receive from your orator his quitclaim deed to said twenty-seven lots at Clarendon Hills, near Boston, Massachusetts, and that such other and further relief may be granted to your orator as to justice appertains.

"(Signed) MINER N. KNOWLTON,
"*Complainant.*
"B. M. MUNN,
"*Solicitor for Complainant.*"

The bill is filed November 3, 1882.

JOHN J. HEALY, *Clerk.*

The bill is sworn to by Mr. Knowlton.

809 Complainant's counsel also produces from said files the following appearance, omitting the entitling of the cause:

"We hereby enter the appearance of the defendant in the above-entitled cause and enter our own appearance as her solicitors of record herein, and hereby claim the time allowed by the existing rules of said court in which to demur, plead, or answer to said complainant's bill of complaint. Dated this 4th day of December, 1882.

M. A. RORKE & SON,
Sol'rs for said Defendant.

Indorsed upon this appearance is the file mark of the clerk in words and figures as follows:

"Filed December 4, 1882. John J. Healy, clerk."

Mr. HILL: I will ask Mr. Rorke if he has any part of the files that belong to this case?

Mr. RORKE: No, sir; we have the fourteen exhibits upon which Judge Jameson dissolved the injunction.

Q. Have you the answer of Mrs. Hanbury?

A. I believe so. There are original documents attached to these exhibits—original letters of Mr. Knowlton; we took them off for safety.

810 Complainant's counsel reads from the bill filed Feb'y 8, 1883, as follows, omitting the address of the bill:

"Humbly complaining, shows unto your honors your oratrix, Anna Hanbury, of the city of Chicago, county of Cook, and State of Illinois, that by articles of agreement of the 8th day of September, 1882, made between Miner Nathaniel Knowlton, of the first part, and Anna Hanbury, your oratrix, of the second part, the said Miner Nathaniel Knowlton agreed to convey by warranty deed unto the said Anna Hanbury, her heirs and assigns, lots Nos. 1 and 2 of McKee's subdivision of lots 53, 54, 55, 56, in Taylor's subdivision of block 43, in canal trustees' subdivision, and the west half of the northeast quarter of section 17, in township 39, range 14 east, of the third principal meridian, in Chicago, county of Cook, Illinois; also lot No. 57, in Taylor's subdivision of block 43 (43), with all the buildings and improvements thereon, subject to an incumbrance of $1,800 on the part of said premises known as No. 22 Winthrop Place,

811 Chicago, with the appurtenances, and free from all incumbrances and liens except that of the taxes for the year 1883, for and in exchange for a certain parcel of land of the said Anna Hanbury situated in the county of Suffolk and State of Massachusetts, therein particularly described, subject to the incumbrance therein mentioned; that said Knowlton thereby agreed to furnish an abstract of title to said premises, in Chicago, Cook county, Illinois, duly certified to by Handy & Co., Haddock, Vallette & Rickcards, or the recorder of Cook county, for examination and for the opinion of Hanbury's counsel; that it was thereby further agreed that the said Miner Nathaniel Knowlton should use the north wall of the building erected on the north line of said lot No. 57, in Taylor's subdivision, as a party wall, as by the said articles of agreement, which were duly signed, sealed, acknowledged, and interchangeably delivered on the 8th day of September, 1882, when produced, will more fully and at large appear, and which were also duly recorded in the recorder's office of Cook county, Illinois, on

812 the 9th day of September, A. D. 1882, in Book of Records, on page 76, herewith filed as Ex. A.

That your oratrix afterwards received from her attorney, M. A. Rorke, two notes in writing regarding the title of said respective lots, given by said Knowlton, which she has herewith filed and marked Exhibits B and C.

That Ex. C directs your oratrix's attention to the incumbrance of said $1,800 on said lot 1, in McKee's subdivision of lots 53, 54, 55, and 56, in Taylor's subdivision of block 43, in canal trustees' subdivision of the west half of the west half of the northeast quarter of section 17, etc.

And your oratrix further shows that, on the said 28th day of September, 1883, she and the said Miner Nathaniel Knowlton met, by

appointment, at the office of said attorneys, M. A. Rorke & Son, 80 La Salle St., room 7; that one of said attorneys then and there asked said Knowlton who then was the owner of said incumbrance, amounting to $1,800; that said incumbrance appeared to be overdue since the 25th day of June, A. D. 1882, and that no re-
813 ceipt for the payment of interest has as yet been produced; that Knowlton then and there answered that he, Knowlton, controlled said incumbrance. He further stated all the interest on said incumbrance of $1,800 was already paid up to October 1, 1882, and that your oratrix would pay interest on said incumbrance from October 1, A. D. 1882, and that she would have to pay said half year's interest on said sum of $1,800 on the 1st of April, 1883, at the rate of 8 per cent. per annum, and that he would collect and receive said interest from her and receipt for the same.

Your oratrix further shows that, by indenture, bearing date said 28th day of September, 1882, made between said Miner N. Knowlton, of the first part, and an unmarried woman, Anna Hanbury, of the second part, your oratrix, for the alleged consideration of $15,000, said Knowlton granted, conveyed, and confirmed to your oratrix, and to her heirs and assigns forever, said lots hereinbefore described, lot No. 2 being subject to an incumbrance of $1,800 and in-
814 terest from ——, A. D. 188–, recorded in the recorder's office of Cook county, Illinois, in Book 717 of Records, on page 170, and payment thereof, which payment is thereby assumed by said grantee as part purchase-money, with the appurtenances, with covenants of seisin, title freed from conveyances, incumbrances, and liens."

Counsel for the defendant, Anna Hanbury, objects to the reading of this bill of Hanbury *vs.* Baird for the general objections stated, as it cannot in any way affect her in this order of reference, and the special objection that counsel is reading extracts from the bill instead of putting in the bill entire.

Counsel for complainant assures the counsel for Mrs. Hanbury that the records in this suit or files may now, from this time forward throughout the whole litigation which may take place in this court, be considered in evidence, as far as he and his client are concerned, until he shall fully appear in the case and desire to
815 use the same; that the purpose of the introduction of this record at this time is to show this court the nature of the controversy which has arisen between the defendant, Miner Nathaniel Knowlton, and the defendant, Anna Hanbury, concerning the trust deed here, which appears to have been purchased with the property of the complainant and which it is the duty of the said Anna Hanbury to pay if the agreement between her and the said Knowlton shall be carried out, and upon which deed of trust the resulting trust prayed for in complainant's bill is sought to be fixed, and to show that, on the other hand, the defendant, Miner N. Knowlton, seeks by his bill to rescind the said agreement for false and fraudulent representations on the part of the defendant Hanbury,

but that the defendant Hanbury, on the other hand, by her bill seeks to reform the said agreement.

The bill further continues: "That on the 30th day of January last there was left at your oratrix's residence, on Michigan
816 avenue, Chicago, by some person to her unknown, a U. S. letter-carrier, a copy of the Daily Inter-Ocean of Thursday morning, January 11, 1883, containing this notice:

"*Trustee's Sale.*

"Whereas Blanche D. McKee and William H. McKee, her husband, by their deed of trust, dated the 25th day of June, A. D. 1877, and recorded in the recorder's office in Cook county, Illinois, in Book 717 of Records, page 171, convey to the undersigned, in trust, the real estate hereinafter described, to secure a certain joint promissory note of said William H. McKee and Blanche D. McKee, of even date therewith, for the principal sum of $1,800, payable to the order of said William H. McKee five years after date thereof, with interest thereon at 9 per cent. per annum, payable semi-annually, which said note was duly indorsed by said William H. McKee; and whereas default has been made in the payment of said principal sum and of the interest due thereon since June 25, 1881, and there is now claimed to be due and unpaid of principal and interest
817 on said note the sum of $2,166.81; —as application has been made to me, as such trustee, by the legal holder of said note, to sell said real estate in accordance with the provisions of said deed of trust:

"Now, therefore, I, Lyman Baird, trustee as aforesaid, hereby give notice that, in pursuance of such application and under the power and for the purpose expressed in said trust deed, I will, on Tuesday, the 13th day of February, A. D. 1883, at 10 o'clock in the forenoon, at the east door of the court-house, on Clark street, Chicago, Cook county, Illinois, sell, at public auction, to the highest bidder, for cash, the premises conveyed by said deed of trust, and all the right, title, benefit, and equity of redemption of the said grantors in said deed of trust, their heirs and assigns, therein, which said premises are situated in the city of Chicago, county of Cook, and State of Illinois, and known and described as follows, to wit:

"Taken at a point in the east line of Tompkins street 20 feet south of the northwest corner of lot 56, in H. M. Taylor's sub-
818 division of block 43, in the canal trustees' subdivision of the west half of the west half of northeast quarter of section 17, town. 39 north, range 14 east, of the 3rd principal meridian, and running thence south of said east line of Tomkins street 20 feet; thence east, parallel to the north line of said lot, 56,325.4 feet, more or less, to an alley; thence north, on west line of said alley, 20 feet; thence west, parallel to said north line of said lot, 56,125.4 feet, more or less, to the place of beginning," etc.

Signed by Lyman Baird, trustee.

The bill further proceeds:

"Your oratrix further shows unto your honors that in a certain cause now at issue in this court, general docket number 84543, term number 2056, wherein Miner N. Knowlton aforesaid is the complainant and your oratrix is the sole defendant, the *ex parte* injunction therefore granted by this court was dissolved," etc.

The bill further proceeds:

"That your oratrix hereby makes all the files in the case No. 84543 in this court exhibits to sustain this her bill for relief."

Mr. HILL: Mr. Rorke, where is the answer of Mr. Knowl-
819 ton in the case numbered 85764?

Mr. RORKE: I will state that it is in the possession of counsel for complainant, Anna Hanbury, case 85764, superior court of Cook county, for the purpose of either excepting or applying the same.

Mr. HILL: I want to show another fact, Mr. Rorke. I understand that a sum of money has been paid into court in that suit as a court fund?

A. Yes, sir.

Q. Will you state the amount?

A. Yes, sir.

Counsel for defendant, Anna Hanbury, at the request of complainant's counsel, but not for the purpose of making any appearance other than for the purpose of objecting, but, as a matter of courtesy, states, at his request, that in case general number 85764, in the superior court of Cook county, Anna Hanbury, complainant, *vs.* Lyman Baird, Miner N. Knowlton, and the unknown owners, and by amendment to the bill, Emily Hoyt, complainant in this cause, was made a defendant therein, by leave of court, as a court fund, in the
320 case of Hanbury *vs.* Lyman Baird and others, the sum of $2,194.01 was paid into court upon the 21st day of February, A. D. 1883, to the credit of that cause, to be adjudicated and subject to the further order of the superior court of Cook county in that cause.

The cross-examination of the witness, JOHN WRIGHT, by Mr. RORKE is as follows:

Q. In case 84543, superior court of Cook county, Knowlton *vs.* Hanbury, in which you stated that you had the files of the superior court of Cook county, please state whether you have the entire files or only a portion of them.

A. I have all that were in the files.

Q. Do you undertake to say that all the files in the case are there?

A. I could not swear to that.

Q. Have you with you, among the records of the superior court of Cook county, a certified copy showing proceedings and order of court in this case?

A. Yes.

Q. Have you the orders of record of the superior court with you?

A. No, sir; I haven't with me.

Q. Have you with you the defendant's answer and fifteen
821 exhibits? The wrapper and case shows it was filed therein December 19, 1882.

A. I couldn't answer as to that.

Q. Do you know whether or not the injunction in this case was dissolved?

A. No, sir.

Mr. HILL: We admit that it was.

Mr. RORKE: With reference to chancery case 85764, Hanbury *vs.* Baird, do you undertake to say that the wrapper produced by you contains the entire files in the case.

A. I don't know, sir. I could not swear to that.

Q. Please state whether or not, as deputy clerk, you are authorized to mark papers filed.

A. I am, sir.

Q. Do you know whether or not these two cases, part of the files of which have been produced by you, are pending cases?

A. They are pending; yes, sir.

M. A. RORKE, called as a witness on behalf of the —, was examined by Mr. HILL, and testified as follows:

Q. Will you please examine that paper?

A. I have done so.

Q. Will you please state what it is?

822 A. I desire to state that I am here as counsel for the def't, Anna Hanbury, for the special purpose mentioned and noted throughout the evidence taken, and that as to any matter or any knowledge concerning the matters in controversy here are claimed by me to be privileged as the relation of attorney and client, with a retainer paid, has existed between myself as a member of the law firm of Rorke & Son since September last; that I appear here only to object to further proceedings; that I must, *will* all due respect to the master and the court he represents, decline to testify in the matter or thing which I think is privileged.

Q. Mr. Rorke, will you please state to me what the instrument purports to be which I now hand you?

A. The paper now handed to me purports to be a certified copy of a trust deed given by Anna Hanbury to one Michael Andrew Rorke, as trustee of Frederick John Rorke, his successor in trust, upon property in Cook county, Illinois.

Q. Is it not a fact, Mr. Rorke, that the moneys which you have testified were paid into the superior court of Cook county, in
823 the suit of Hanbury *vs.* Baird, on the 21st day of February last were a part of the proceedings of the note and trust deed of which this purports to be a certified copy?

A. I must decline to answer on the ground that the relation of attorney and client exists between myself and Anna Hanbury, with all due respect to the master, and that any knowledge that I have of or concerning this trust deed or transactions thereunder are by virtue of the relationship of attorney and client. I am not one of

the trustees named in the trust deed nor the notary who took the acknowledgement, and I have no knowledge of the matters relating to this alleged trust deed except as the attorney of the defendant, Anna Hanbury. I therefore must respectively decline to answer any question in regard to the alleged copy of trust deed produced by defendant's counsel. I will state further that this paper purporting to be a trust deed was filed on the 14th day of February, A. D. 1883, as document No. 448,371, and recorded in Book 1278 of Records, page 64, prior to the filing of the bill in this case.

Q. Mr. Rorke, do you know where the original of that deed is?

824 A. Not of my own knowledge.

Q. Is the deed within the control of the counsel for def't, Anna Hanbury, *is* the original of this deed?

A. It is neither in her custody or control.

Q. And she cannot obtain the original, can she?

A. She cannot.

Mr. HILL: I offer this in evidence as Ex. Q.

Counsel for defendant, Anna Hanbury, objects to the introduction of the paper in question for the reasons which he has repeatedly urged, that under the order of this court nothing can be done before the master which can in any way affect her rights, and upon the further ground that the grantees named in this paper are not parties to this suit, and that their rights cannot in any way be affected by the filing of the bill in this case.

Q. Mr. Rorke, for what purpose was that sum of money paid into court in that case on the 21st day of February?

825 A. For the purpose of doing equity to whoever should turn out to be the holder of the paper. We supposed the defendant, Miner N. Knowlton, was the legal owner of that paper, but we have since learned that he was such owner since the filing of the bill in Hanbury *vs.* Baird, and that Mrs. Emily Hoyt has acquired some title to the property, and she was therefore made a party to that bill by amendment, the note secured by the trust deed being then overdue.

Q. I will ask you, as a matter of fact, if that money that was paid into the superior court of Cook county did not constitute a part of the proceeds received for the note described in this trust deed and the trust deed itself?

A. I must respectfully decline to answer for the reasons aforesaid.

Objection sustained.

The cross-examination of the witness, MINER N. KNOWLTON, was resumed by Mr. MUNN as follows:

Q. What were the representations of Mrs. Hanbury that induced you to make the trade?

A. She produced this plat.

(Witness produces plat.)

Q. The plat which I now hand you?
A. Yes, sir.

826 Mr. RORKE: All this is objected to for the reasons urged before and passed upon by the master.

A. Mrs. Hanbury produced this plat. She told me this way was north (indicating), as the plat now lies, and that that street—Poplar street—was towards the depot; that the Providence railroad ran from East Boston in this way, westerly, a little south; that the lots marked with an H on this plat were her lots; that the station was nearly south and just a short block from this street, on the south side of the lots.

Objected to upon the further ground that it is not cross-examination, no question touching any plat having been asked in his direct examination, in addition to the other reason. Objection sustained.

Counsel for defendant Knowlton states that he desired to offer this testimony of defendant Knowlton for the purpose of exonerating him from the charge of wrongfully disposing of the property on Winthrop Place, *in* which the complainant Hoyt claims she was the owner in equity; but as counsel for Mrs. Hanbury objects
827 to taking the further testimony of Knowlton until he shall have testified under the commission to take his testimony, counsel will withdraw the question relating to the misrepresentations on the part of defendant Hanbury.

Counsel for defendant, Anna Hanbury, does not presume to dictate to counsel for defendant Knowlton as to the manner of cross-examination, but simply objects to the particular question heretofore made.

Mr. HILL: There is an item upon that account, I have forgotten the exact date, for commissions on the part of Mrs. Hoyt in that account.

A. Yes.
Q. What commission did you charge her?
A. Charged her 10 per cent. of the receipts. I didn't think that was out of the way?

Complainant's counsel offers in evidence warranty deed from Anna Hanbury, an unmarried woman, to Miner N. Nathaniel Knowlton, dated September 28, 1882, and recorded in the Suffolk's recordery October 7, 1882, marked Ex. R.

MARCH 1—9 o'clock a. m.

828 Parties met pursuant to adjournment, and the direct examination of MINER N. KNOWLTON was resumed, as follows:

Mr. HILL: Please examine the deed I now hand you and the property described therein and state whether you are acquainted with the property described there.

A. Yes; that is the original signature.
Q. I did not ask you about the signature; I ask in regard to the property. Do you know the lots described and where they are located?

A. Yes.

Q. Do you know the value of the property in that vicinity?

Objected to.

A. Yes.

Q. Do you know the value of the property?

Question objected to for the general objection.

A. Yes.

Q. What is its value—the value of the 27 lots described in that deed?

A. Well, it is not worth more than the incumbrance, according to the agreement that I took the title under.

Counsel for defendant objects to the introduction of this
829 deed in evidence and any testimony touching the property herein described, called the Boston or Clarendon Hills property, for the general objection heretofore made, and the further objection that the witness has not shown himself competent to testify in matters as to the value of this property.

Counsel for the defendant, Anna Hanbury, has heretofore appeared in this case for the sole purpose of objecting to the entry of the order referring the cause to the master, E. B. Sherman, and also for the further purpose, by written motion, of modifying that order, having heretofore limited and now limits his appearance on behalf of said defendant for the sole purpose of objecting to any testimony that may be taken under that order of reference touching the property in the bill described, the legal title whereof is alleged to be in the defendant, Anna Hanbury. Counsel further insisted upon the protection afforded his client by the special clause inserted in the original draft of the order entered February 23, 1883, by his honor
830 Judge Blodgett in this cause. Counsel, being now called upon by complainant's counsel to state whether or not he enters a general appearance in order to enable him to make cross-examination of the witness Knowlton, respectfully declines for the reasons aforesaid to cross-examine said witness at this stage of the case touching any evidence given in his direct examination under this order of reference.

The MASTER: To explain the foregoing note by counsel for Anna Hanbury the master states, before adjournment yesterday, counsel for Anna Hanbury asked whether he would be permitted to cross-examine the defendant Knowlton as to certain points of his evidence, while limiting his appearance in the cause, as has been heretofore done; whereupon the master ruled that he could not cross-examine without entering his appearance in the cause for such purpose.

Counsel for defendant, Anna Hanbury, desires to state that the cross-examination as for and in the manner stated by the
831 master is merely as to the direct testimony given by the witness Knowlton as affecting the property on Winthrop Place and alleged in complainant's bill to be the property of the defendant, Anna Hanbury, or rather that she is seized of the legal title thereof,

and with reference to the Boston property, whereof the defendant Knowlton is seized of the legal and equitable title thereof.

In the Circuit Court of the United States for the Northern District of Illinois.

EMILY HOYT *vs.* MINER N. KNOWLTON *et al.*

To Miner N. Knowlton, one of said defendants, and B. M. Munn, his solicitors; Anna Hanbury, one of said defendants, and M. A. Rorke & Son, her solicitors:

You and each of you will please take notice that on Thursday, March 29th, 1883, at 10 o'clock a. m., the undersigned, master
832 in chancery, under the rules of court authorizing him so to do, will further examine said Miner N. Knowlton touching the matters specified in the order of court of date February 23rd, 1883.

March 27th, 1883.

E. B. SHERMAN,
Master in Chancery of said Court.

MARCH 29TH, 1883.

The examination of the witness Knowlton on the notice given by the master.

The master being of the opinion that, upon the evidence already given in said cause, he would be unable to fully comply with the order of court referring this cause to him for the purposes in said order named, the master, under authority upon him conferred under the rules of court, and upon notice, examines the witness further touching the matters of reference, and the said witness appears in person and by B. M. Munn, his solicitor, and the said defendant, Anna Hanbury, appears specially, as hereinbefore set forth, and the said complainant appears by Edward J. Hill, her solicitor.

833 Counsel for defendant Knowlton objects and protests against the further examination of the witness Knowlton, because—

(1.) The testimony of the witness has already been taken and closed in pursuance of the said order; and

(2.) The witness has testified that he purchased the Clark St. property in the name of Emily Hoyt and the Winthrop Place property in his own name; and that all the rents and profits of the Clark St. property, owned by the complainant, Emily Hoyt, he invested in the Winthrop Place property and in the mortgage of $1,800, and that he bestowed much time and labor upon the Winthrop Place property, for which in equity he should be allowed reasonable compensation.

(3.) That the witness has already testified that he performed the duties of his agency as to his sister in good faith, and, as agent, is willing to disclose and justify all the material facts in connection with his agency.

Counsel for defendant, Anna Hanbury, appears for the purpose hereinbefore noted—for the special purpose of obtaining —, and now
834 respectfully objects to the master pursuing any inquiry, through the defendant Knowlton, touching the Winthrop Place property, upon the ground that it is alleged in complainant's bill that the legal title to said property is in the defendant, Anna Hanbury; that, also, by the terms of the — under which the master is now pursuing this inquiry, the proceeding cannot in any way affect the defendant Hanbury or the property alleged to be owned by her.

Counsel for defendant, Anna Hanbury, admits that were it not for the exception in the order the master would have the right to pursue this examination on his own motion as to the matters about which he desires to inquire.

The objection is also urged upon the further ground that the defendant, Miner N. Knowlton, has already sworn before the master that there was nothing on record to put the defendant, Anna Hanbury, on inquiry or to give her notice of any alleged equitable rights of the complainant, Emily Hoyt.

And, further, that in all transactions and testimony as developed
835 before the master, under this order and otherwise, and the testimony taken under the notice *de bene esse*, which is made an exhibit, the defendant, Miner N. Knowlton, has solemnly sworn that during all his alleged transactions with Anna Hanbury he never mentioned the name of the complainant, Emily Hoyt, which is to be found upon pages 35, 36, 42, 43, 44, and 45 of the cross-examination of Mr. Knowlton by his solicitor, Mr. Munn, and also in the cross-examination by Mr. Rorke, on pages —.

This reference to the testimony *de bene esse* is made because the counsel for complainant has made the entire testimony taken under the order of February 23rd and exhibit and part of this deposition.

By the MASTER:

Q. You have stated in your examinations heretofore that you purchased what is called the Winthrop Place property with the money of complainant, Emily Hoyt, and that part of such property was improved by you; that you made sundry improvements upon the property before the exchange with the defendant Hanbury, and
836 that part of the property was already improved. Now, please state whether you collected the rents from the tenants in possession of such property after you purchased it and before the exchange thereof.

A. Yes.

(By the MASTER:) Can you state the amount of rents so collected by you, and also any money paid out by you, in connection with your care of the property, for insurance, taxes, or otherwise? And, if so, will you please do so, and confine yourself in this regard to the time possession was transferred to the defendant Hanbury.

A. I submit this paper as an account of the rents and incidentals

connected with that. It has nothing to do with the improving of No. 18.

(The paper produced by the witness is attached to his deposition as Exhibit No. "8.")

By the MASTER:

Q. Does the statement you now hand me, headed "Account of rent received, Winthrop Place property," contain a correct statement of the moneys received by you on rents up to about the time that property was exchanged with Mrs. Hanbury, and also what money you expended in the payment of taxes, repairs, and your commission for such collection?

837 A. Yes, sir.

By the MASTER:

Q. Did you not pay something for insurance during that time?
A. No; I think not.

By the MASTER:

Q. You have stated heretofore that you expended time and labor in erecting the buildings on what is called 18 Winthrop Place, and that while you used the money of complainant in such matters that you expended your own time and labor. Will you now please state about how much time and labor you expended in and about the erection and construction of the buildings at 18 Winthrop Place?
A. The better part of two years of my time was occupied in that building.

By the MASTER:

Q. When did you commence the construction of that building, or about when?
A. I commenced the hauling — materials there in June, 1880.

By the MASTER:

Q. What time was it completed?
A. Not fully until about July, 1882.

By the MASTER:

Q. Did you do any carpenter work yourself?
A. Yes; most of the carpenter work.

838 By the MASTER:

Q. What do you think your services, at their cash value, which you performed in connection with the improvement of that property, were worth?
A. From $1,000 to $2,000. I don't know that $2,000 would be too much.

By the MASTER:

Q. Had you any agreement with the complainant in regard to

performing such services before the same were performed or has there been any agreement regarding the same since?

A. Never, in any manner whatever.

Cross-examination by Mr. MUNN:

Counsel for complainant, Emily Hoyt, now here, admits that it is a fact that the complainant in this suit never had any knowledge, in any way, shape, or manner, that her moneys had been invested in the Winthrop Place property, or that she had any interest, either legal or equitable, therein until about the time of the filing of this bill, except as to the trust deed upon No. 22 Winthrop Place, which was sent to her shortly after it was purchased by Miner N. Knowlton.

Counsel further admits that Miner N. Knowlton never told
839 Anna Hanbury that the complainant, Emily Hoyt, had any interest whatever in the premises known as 18, 20, and 22 Winthrop Place.

Furthermore, that the first knowledge which came to complainant of any interest or right in the Winthrop Place property, except as to the trust deed, came to her by virtue of the filing of the bill of Anna Hanbury against Miner N. Knowlton to enjoin the sale under said trust deed and to reform the contract as alleged in said bill.

Q. Please state to the master where and how you invested these moneys spoken of in your examination-in-chief—meaning the rents collected from the Winthrop Place property.

(Objected to by counsel for Anna Hanbury.)

A. There was $400 of that money which I loaned to Mrs. Hanbury on the diamonds she had on when she was here last, and the balance of it was invested in the improvements at No. 18.

Q. Did you ever get that money back from her?

A. Never a cent in any manner.

Q. Have you in all things acted and testified fairly and truthfully as to your relations to your sister and to Mrs. Hanbury
840 in relation to the attempted exchange of property?

A. Yes, sir; I have, and I suppose my sister would have been satisfied if it had been a fair exchange and there had been no fraud.

Q. In your business relations with your sister, with respect to the Winthrop Place property, did you make or attempt to make an exchange with Mrs. Hanbury for your own or your sister's benefit?

(Objected to by counsel for Anna Hanbury upon the ground that the question is immaterial, and, further, that it is a conclusion of law from the evidence already taken.)

The master permits the question to be answered only for the purpose of showing the good faith of the witness in the transaction.

A. I did it — my benefit mainly and thought that it would be for my sister's benefit also, as well as for Mrs. Hanbury's, and I supposed it was a fair and honorable exchange, as Mrs. Hanbury

had represented her property down there to be worth so much. Real-y, I had no intention to injure or to do anything underhandedly towards my sister or towards Mrs. Hanbury.

841 Q. Can you state, from your knowledge and experience as a carpenter and taking care of property in the city of Chicago, in view of all the circumstances of the case, what your services are reasonably worth?

(Objected to by counsel for Hanbury upon the ground that it is shown that no agreement exists as to any charge by Knowlton against his sister, and, further, because there is no claim made for services as carpenter and builder.)

A. I think they were worth $1,500.

Cross-examination by counsel for complainant:

Q. You said you invested $400 in diamonds. Now, state where and when and under what circumstances you made that investment.

(Objected to by counsel for Hanbury because the evidence is closed, and that this examination is only put by the master to satisfy himself as to a defective examination.)

A. I loaned $400 on a note to Anna Hanbury, secured by the diamonds as collateral, on or about the last of June, 1882, and paid the money over to her in the office of C. J. Shields. That
842 was a temporary loan for about two months, and it was agreed to be returned, with interest.

Q. State whether or not all the circumstances under which that loan was made have been stated by you hitherto in this cause in this court.

A. Yes, sir.

Q. Were these the same diamonds mentioned in the agreement made September 8th between you and Mrs. Hanbury?

A. Yes; and were the same diamonds worn by her a few days since, and were in her possession the last time I saw them.

Q. What became of the note, and when did you surrender to her the diamonds which were deposited by her as collateral?

(Objected to on the same ground as before by counsel for Anna Hanbury.)

A. Soon after the agreement for exchange of properties was made, and as part of that agreement they were surrendered.

MINER N. KNOWLTON.

Endorsed: Filed Nov. 17, 1884. William H. Bradley, clerk.

843 EXHIBIT HANBURY, A.

Know all men by these presents that we, Harvey A. Whiting, of Wilton, in the county of Hillsborough and State of New Hampshire, and George O. Whiting, of Lexington, county of Middlesex, State of Massachusetts, in consideration of nineteen thousand nine

hundred & sixty-two $\frac{27}{100}$ dollars paid by Anna Hanbury, of Cambridge, in the county of Middlesex and Commonwealth of Massachusetts, wife of John D. Hanbury, in her own right, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Anna Hanbury, her heirs, and assigns, forever a certain parcel of land situated in that part of Boston, in the county of Suffolk and Commonwealth aforesaid, called Clarendon Hills, being lots numbered one, eight, nine, twelve, thirteen, twenty-three, twenty-four, twenty-seven, twenty-eight, twenty-nine, thirty-five, thirty-nine, forty, forty-one, forty-five, forty-seven, fifty-five, fifty-six, fifty-eight, sixty, sixty-three, sixty-nine, seventy-three, seventy-seven, seventy-eight, seventy-nine, and eighty on a
844 plan of land of C. J. Page and J. H. Page, at Clarendon Hill, drawn by S. W. Hencke and dated May 22d, 1872, and recorded in Norfolk registry of deeds, containing one hundred and ninety-nine thousand four hundred and sixty-one square feet of land, being a portion of the premises conveyed to us by Charles J. Page and James H. Page by their deed, dated May 5th, 1873, and recorded with Norfolk county deeds, Lib. 440, fol. 268:

To have and to hold the granted premises, with all of the privileges and appurtenances thereto belonging, to the said Anna Hanbury and her heirs and assigns, to their own use and behoof forever.

And we do hereby, for ourselves and our heirs, executors, and administrators, covenant with the said grantee and her heirs and assigns that we are lawfully seized in fee simple of the granted premises; that they are free from all incumbrances except taxes for 1876; that we have good right to sell and convey the same as aforesaid, and that we will, and our heirs, executors, and adminis-
845 trators shall, warrant and defend the same to the said grantee and her heirs and assigns forever against the lawful claims and demands of all persons.

And for the consideration aforesaid I, Laura B. Whiting, wife of George O. Whiting, and Mary E. Whiting, wife of Harvey A. Whiting, do hereby release unto the said grantee and her heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness whereof we, the said Harvey A. Whiting, George O. Whiting, Laura B. Whiting, and Mary E. Whiting, hereunto set our own hands and seal- this twenty-fourth day of July, in the year one thousand eight hundred and seventy-six.

HARVEY A. WHITING. [SEAL.]
GEO. O. WHITING. [SEAL.]
MARY E. WHITING. [SEAL.]
LAURA B. WHITING. [SEAL.]

Signed, sealed, and delivered in presence of—
A. GATES, JR.
H. A. & G. O. WHITING.
GEORGE WHITING.
C. A. McKEAN.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk, }

JULY 29TH, 1876.

Then personally appeared the above-named Harvey A.
846 Whiting & George O. Whiting and acknowledged the foregoing instrument to be their free act and deed before me—

A. GATES, JR.,
Justice of the Peace.

BOSTON, *July* 31*st*, 1876—at 4 o'clock and 10 minutes p. m.
Received and entered with Suffolk deeds, Libro 1337, folio 223.
Attest: THOS. F. TEMPLE, *Register.*

847 EXHIBIT A, RORKE.

Articles of agreement entered into this eighth (8) day of September, 1882, between Miner Nathaniel Knowlton, of the city of Chicago, in the county of Cook and State of Illinois, of the first part, and Anna Hanbury, of the second part, witnesseth:

That the said Miner Nathaniel Knowlton by these presents agrees to convey and grant, by warranty deed, unto the said Anna Hanbury, her heirs and assigns, lots numbered one (1) and two (2) of McKee's subdivision of lots fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56), in Taylor's subdivision of block forty-three (43), in the canal trustees' subdivision of the west half and the west half of the northeast quarter of section seventeen (17), in township thirty-nine (39) north, range fourteen (14) east, of the 3d P. M., in Chicago, Cook county, Illinois; also lot fifty-seven (57), in Taylor's subdivision of said block forty-three (43), with all the buildings and improvements thereon, except an incumbrance of eighteen hundred dollars on part of said premises known as No. 22 Winthrop Place thereon, with the appurtenances, and free from all other incumbrances and liens, except that of taxes for the year 1883 *three*, for
and in exchange of and for the following-described lands
848 and tenements, with the appurtenances, of the said Anna Hanbury, known and described as follows, to wit:

"A certain parcel of land situated in that part of Boston, in the county of Suffolk and Commonwealth aforesaid, called Clarendon Hills, being lots numbered one (1), eight (8), nine (9), twelve (12), thirteen (13), twenty-three (23), twenty-four (24), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-five (35), thirty-nine (39), forty (40), forty-one (41), forty-five (45), forty-seven (47), fifty-five (55), fifty-six (56), fifty-eight (58), sixty (60), sixty-three (63), sixty-nine (69), seventy-three (73), seventy-seven (77), seventy-eight (78), seventy-nine (79), and eighty (80), on a plan of land of C. J. Page and J. H. Page, of Clarendon Hills, drawn by E. W. Hencke and dated May 22d, 1872, and recorded in Norfolk registry of deeds, containing, to wit, in or about one hundred and ninety-nine thousand four hundred and sixty-one (199,461) square feet of land, being a

portion of the premises to Harvey A. Whiting and George O. Whiting by deed from Charles J. Page and J. H. Page conveyed, dated May 5th, 1873, and recorded with Norfolk county deeds, Lib. 440, folio 268; to have and to hold said last-described premises to said Miner Nathaniel Knowlton in fee, but subject, nevertheless, to an incumbrance of one thousand dollars, which includes a mort-
849 gage of eight hundred dollars & interest and two hundred dollars agreed upon as a lien on said premises, though not acknowledged or recorded.

It is further agreed that said Knowlton shall furnish an abstract of title to said premises, duly certified to by Handy & Co., Haddock, Valtelle & Rickards, or the recorder of Cook county, Illinois, for examination and for the opinion of said Anna Hanbury's counsel, and that the said Anna Hanbury shall furnish to the said Miner Nathaniel Knowlton an abstract, according to the custom in Boston, Massachusetts, of the title to the said above-described premises situate in Suffolk county, Massachusetts.

It is agreed further that said Miner Nathaniel Knowlton may use the north wall of the building erected on the north line of said lot No. fifty-seven (57), in Taylor's subdivision of block 43, C. T. subdv. of W. $\frac{1}{2}$ & W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, sect. 17, T. 39 N., R. 14 E., of 3d P. M., as a party wall whensoever he desires so to do.

And it is lastly agreed that said Miner Nathaniel Knowlton shall deliver to said Anna Hanbury a certain sett of Diamonds, free of charge, as a condition precedent to the execution of a deed of conveyance of her real estate above described by her to said Knowl-
850 ton, which diamonds have been deposited heretofore by her with him as security for a loan of money.

MINER N. KNOWLTON. [SEAL.]
ANNA HANBURY. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Andrew M. Rorke, a notary public in and for the said county, in the State aforesaid, do hereby certify that Miner N. Knowlton and Anna Hanbury, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and seal this eighth (8th) day of September, A. D. 1882 (eighty-two).

[NOTARIAL SEAL.] ANDREW M. RORKE,
A Notary Public in said County and in said State.

Endorsed: Filed Dec. 19, 1882. Jno. J. Healy, clerk.

851 EXHIBIT HANBURY, B.

Know all men by these presents that we, Charles J. Page, of West Roxbury, in the county of Norfolk and Commonwealth of Massachusetts, and James H. Page, of Boston, in the county of Suffolk, in said Commonwealth, in consideration of twenty-one thousand dollars paid by Harvey A. Whiting and George O. Whiting, both of Wilton, in the county of Hillsborough and State of New Hampshire, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Harvey A. and George O. Whiting, and their heirs and assigns forever, a certain parcel of land, situated at Clarendon Hills, in said West Roxbury, containing two hundred and eleven thousand one hundred and seventy-four square feet, being lots numbered one, eight, nine, twelve, thirteen, twenty-three, twenty-four, twenty-seven, twenty-eight, twenty-nine, thirty-five, thirty-nine, forty, forty-one, forty-five, forty-seven, fifty-five, fifty-six, fifty-eight, sixty, sixty-three, sixty-nine, seventy-three, seventy-seven, seventy-eight, seventy-nine, and eighty, on a plan of land of C. J. Page and J. H. Page, at Clarendon Hills, drawn by E. W. Hencke and dated May 22d, 1872, and recorded in Norfolk registry of deeds, being a portion of the
852 premises conveyed to us by William A. Blayo by a deed dated February 27th, 1872, and recorded with Norfolk deeds, Lib. 420, fol. 70, subject to taxes for the year 1873 :

To have and to hold the above-granted premises, with all the privileges and appurtenances to the same belonging, to the said Harvey A. and George O. Whiting, their heirs and assigns, to their own use and behoof forever.

And we, the said grantors, for ourselves and our heirs, executors, and administrators, do covenant with the said grantees and their heirs and assigns that we are lawfully seized in fee simple of the aforegranted premises; that they are free from all encumbrances; that we have good right to sell and convey the same to the said grantees and their heirs and assigns forever as aforesaid, and that we will, and our heirs, executors, and administrators shall, warrant and defend the same to the said grantees and their heirs and assigns forever against the lawful claims and demands of all persons.

In witness whereof we, the said Charles J. Page, Kate C. Page, James H. Page, and Sarah W. Page, in token of our release
853 of all right and title of or to both dower and homestead in the granted premises, have hereunto set our hands and seals this fifth day of May, in the year of our Lord one thousand eight hundred and — three.

CHAS. J. PAGE. [SEAL.]
KATE C. PAGE. [SEAL.]
JAMES H. PAGE. [SEAL.]
SARAH W. PAGE. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. GATES, JR.,
To C. J. Page.
ALBERT GILLINGHAM.

SUFFOLK, *ss:*

MAY 29TH, 1873.

Then personally appeared the above-named James H. Page and acknowledged the above instrument to be — free act and deed before me—

JAMES DAILY,
Justice of the Peace.

DEDHAM, *June* 3, 1873.

Received and entered with Norfolk deeds, Lib. 440, fol. 268.
JAMES FOORD, ESQ., *Reg.*

SUFFOLK, *ss:*

MAY 29TH, 1873.

Then personally appeared the above-named Chas. J. Page and acknowledged the above instrument to be his free act and deed before me—

A. GATES, JR.,
Justice of the Peace.

854 EXHIBIT RORKE, B.

This indenture, made this twenty-eighth (28) day of September, in the year of our Lord one thousand eight hundred and eighty-two (1882), between Miner Nathaniel Knowlton, an unmarried man, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Anna Hanbury, of the said city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of fifteen thousand dollars ($15,000), in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to her heirs and assigns forever all the following-described lots, pieces, or parcels of land situated in the county of Cook and State of Illinois and known and described as follows, to wit:

855 Lots numbered one and two (1 & 2), in McKee's subdivision of lots numbered fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56), in H. M. Taylor's subdivision of block forty-three (43) of the canal trustees' subdivision of the west half and the west half of the northeast quarter (W. ½ & W. ½ of N. E. ¼) of section seventeen (17), in township thirty-nine (39) north, range fourteen (14) east, of the third (3d) principal meridian, said lot numbered two (2) being subject to an incumbrance of eighteen hundred dollars and interest from ——, A. D. 188–, recorded in the recorder's office of Cook county, Illinois, in Book 717 of Records, on page 170, the payment whereof at maturity is hereby assumed by said grantee

as part of the purchase-money, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained
856 and described, with the appurtenances, unto the said party of the second part, her heirs and assigns, forever.

And the said Miner Nathaniel Knowlton, an unmarried man, party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, bargain, and agree to and with the said party of the second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the party of the second part, her heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State
857 of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

MINER N. KNOWLTON. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook. }

I, Michael Andrew Rorke, a notary public in and for said county, in the State aforesaid, do hereby certify that Miner Nathaniel Knowlton, an unmarried man, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth (28) day of September, A. D. 1882.

[NOTARIAL SEAL.] MICHAEL ANDREW RORKE,
Notary Public in & for Cook Co., Ills.

858 EXHIBIT HANBURY, C.

George A. Cobb. John A. Rice & Co. Charles C. Hilton.

TREMONT HOUSE, CHICAGO, *August 12th*, 1882.

R. Heber, Esq.

DEAR SIR: I address you to inquire the value of "Page estate" lots, Clarendon Hills, West Roxbury, 29 lots, 199,461 sq. feet, on Beach, Poplar, & Charles Sts., Nos. 1, 8, 9, 12, 13, 23, 24, 27, 28, 29, 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 78, 79, 80, plan — C. J. & J. H. Page, drawn by E. W. Hencke May 12th, 1872, recorded in Norfolk. We thought of realizing on this property and desire to ask what, in your opinion, would this property bring per lot at an auction sale, for cash (say 10 % down and balance in 30 or 60 days); also what would be the largest sum you could negotiate a 3-year loan on the 27 lots—title perfect. Would ask if you consider this desirable property to sell; that you could closely estimate its value, or if it would be hard to guess its price at a sale.

An early answer will very much oblige,

Yours respectfully, M. N. KNOWLTON,
394 *South Clark St., Chicago.*

859 Endorsed: Knowlton's letter to R. Heber. Filed Dec. 19, 1882. Jno. J. Healy, clerk.

860 EXHIBIT RORKE, C.

This indenture, made this twenty-eighth (28) day of September, in the year of our Lord one thousand eight hundred and eighty-two (1882), between Miner Nathaniel Knowlton, an unmarried man, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Anna Hanbury, of the said city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of six thousand dollars ($6,000), in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to her heirs and assigns forever all the following-described lot, piece, or parcel of land situated in the county of Cook and State of Illinois and known and described as follows, to wit:

861 Lot number fifty-seven (57), in H. M. Taylor's subdivision of block forty-three (43) of the canal trustees' subdivision of the west half and the west half of the northeast quarter (W. ½ & W. ½ of N. E. ¼) of section seventeen (17), in township thirty-nine (39) north, range fourteen (14) east, of the third (3d) principal meridian, subject to the privileges of the said party of the first part, Miner Nathaniel Knowlton, using the north wall of the building

erected on said lot number fifty-seven (57) as a party wall whensoever he desires so to do, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, her heirs and assigns, forever.

And the said Miner Nathaniel Knowlton, party of the first part, for himself, his heirs, executors, and administrators, does covenant,
grant, bargain, and agree, to and with the said party of the
862 second part, her heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable possession of the party of the second part, her heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend.

And the said party of the first part hereby expressly waive- and release- any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale or execution or otherwise.

In w tness whereof the said party of the first part has here-
863 unto set his hand and seal the day and year first above written.

MINER NATHANIEL KNOWLTON. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Michael Andrew Rorke, a notary public in and for said county, in the State aforesaid, do hereby certify that Miner Nathaniel Knowlton, an unmarried man, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth (28) day of September, A. D. 1882.

[NOTARIAL SEAL.] MICHAEL ANDREW RORKE,
Notary Public in and for Cook Co., Ills.

864 EXHIBIT HANBURY, D.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

Superior Court, Cook County, to December Term, A. D. 1882. In Chancery.

MINER N. KNOWLTON *v.* ANNA HANBURY.

Samuel R. Knight, being duly sworn, says he is an auctioneer and real estate agent, residing in the city of Boston, in the county of Suffolk, in said Commonwealth, doing business at 226 Washington street, in said city, under the style of S. R. Knight & Co.; that he has been engaged in said business for sixteen years, and was formerly of the firm of McLellan and Knight, successors to N. A. Thompson; and this affiant further says that about the fifteenth day of August, A. D. 1882, he received the letter hereto annexed; that he never knew the person who purports to have written it and has no knowledge as to how he came to address him, except that he, this affiant, often receives such letters from all parts of this country and
865 occasionally from Europe; that he answered said letter very soon (within a day or two after the receipt of it), answering the inquiries therein contained, and addressed it according to the address given therein, and duly mailed it, postpaid; and affiant says that he never had any other or further connection with the writer of said letter, either personally or by correspondence.

SAMUEL R. KNIGHT.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } ss:

BOSTON, 7 *Dec.*, 1882.

Subscribed and sworn to by the said Samuel R. Knight the day and year last aforesaid, before me—

[SEAL.] JOS. A. WILLARD,
Clerk of Superior Court.

George A. Cobb. John A. Rice & Co. Charles C. Hilton.

TREMONT HOUSE, CHICAGO, *August* 12, '82.

S. R. Knight & Co.

GENTS: I address you to inquire the value of the Page estate lots, Clarendon Hills, West Roxbury, 27 lots, 199,461 sq. ft., on Beach, Poplar, & Charles Sts., Nos. 1, 8, 9, 12, 13, 23, 24, 27, 28, 29,
866 35, 39, 40, 41, 45, 47, 55, 56, 58, 60, 63, 69, 73, 77, 78, 79, 80, plan — C. J. & J. H. Page, drawn by E. W. Hencke May, 1872, recorded — Norfolk.

We thought of disposing of this property and desire to ask what, in your opinion, would this property bring per lot at auction sale, for cash (say 10 % down, balance 30 & 60 days); also the largest sum you think you could negotiate a 3-year loan on the whole—

title perfect. Would ask if you consider this desirable property to sell; that you could closely estimate its value, or if it would be hard to guess its price at a sale. Can you tell me if there are sales of any lots in this vicinity of late, or any demand, or any advance?

Please answer at your convenience & very much oblige,

Yours respectfully, M. N. KNOWLTON,

394 *South Clark St., Chicago, Illinois.*

Endorsed: Filed Dec. 19, 1882. Jno. J. Healy, clerk.

867 EXHIBIT RORKE, D.

Hanbury to Knowlton, Lib. 1574, fol. 536.

This indenture, made this twenty-eighth (28) day of September, in the year of our Lord one thousand eight hundred and eighty-two (1882), between Anna Hanbury, an unmarried woman, of the city of Chicago, in the county of Cook and State of Illinois, party of the first part, and Miner Nathaniel Knowlton, of the said city of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of twenty-one thousand ($21,000) dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, has granted, bargained, sold, remised, released, conveyed, aliened, and confirmed, and by these presents does grant, bargain, sell, remise, release, convey, alien, and confirm, unto the said party of the second part and to his heirs and assigns forever all the following-described lots, pieces, or par-
868 cels of land situated in the county of Suffolk and State of Massachusetts and known and described as follows, to wit:

Lots numbered one (1), eight (8), nine (9), twelve (12), thirteen (13), twenty-three (23), twenty-four (24), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty-five (35), thirty-nine (39), forty (40), forty-one (41), forty-five (45), forty-seven (47), fifty-five (55), fifty-six (56), fifty-eight (58), sixty (60), sixty-three (63), sixty-nine, (69), seventy-three (73), seventy-seven (77), seventy-eight (78), seventy-nine (79), eighty (80), on a plan of land of C. J. Page and J. H. Page at Clarendon Hills, drawn by E. W. Hencke and dated May 22d, 1872, and recorded in Norfolk registry of deeds, containing one hundred and ninety-nine thousand four hundred and sixty-one (199,461) square feet of land, being a portion of the premises conveyed to Harvey A. Whiting and George O. Whiting by Charles J. Page and James H. Page by their deed, dated May 5th, 1873, and recorded with Norfolk county deeds, Lib. 440, fol. 168, said certain parcel of land situated in that part of Boston, in county of Norfolk and Commonwealth aforesaid, called Clarendon Hills, subject, nevertheless, to a mortgage made December the eleventh (11), A. D. 1878, recorded, Lib. 1443, folio 82, in Norfolk registry of deeds, in said Suffolk county, Massachusetts, made by Anna Hanbury to Susan E. Cheever

for the sum of eight hundred dollars ($800), subject also to a
869 lien by attachment for two hundred dollars of November 8th, A. D. 1881, Mark A. Blaisdell *vs.* Anna Hanbury, in attachment book, said county and State, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above *and* described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said Anna Hanbury, an unmarried woman, party of the first part, for herself, her heirs, executors, and administrators, does covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, & indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and
870 incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable — of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend, save and except as against said incumbrance and said lien, payment whereof are hereby assumed by said grantee as part of said purchase-money. And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Massachusetts providing for the exemption of homesteads from sale or execution or otherwise.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ANNA HANBURY. [SEAL.]

Signed, sealed, and delivered in the presence of—
ANNA HANBURY.

(Between 16- and 17th lines from top of deed the words lot forty-seven (47) interlined before execution, in presence of the grantor.)

871 STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Michael Andrew Rorke, a notary public in and for said county, in the State aforesaid, do hereby certify that Anna Hanbury (an unmarried woman), personally known to me to be the same person

whose name is subscribed to the foregoing deed, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said deed as her free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth day of September, A. D. 1882.

MICHAEL ANDREW RORKE,
Notary Public in and for Cook Co., Ill.,
and his Notarial Seal.

STATE OF ILLINOIS, } ss:
Cook County, }

I, E. F. Klokke, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Michael Andrew Rorke, Esq., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment a notary public in and for Cook county, duly commissioned, sworn, and acting
872 as such and authorized to take the same; that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgment is genuine; and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, the said county, this 28th day of Sept., 1882.

E. F. C. KLOKKE,
Clerk and the Court Seal.

October 7, 1882, at eleven o'clock and twenty-one minutes a. m., received, entered, and examined.
Attest: THOS. F. TEMPLE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, Lib. 1574, fol. 536.
Attest: THOS. F. TEMPLE, *Reg.*

Endorsed: Filed Dec. 19, 1882. Jno. J. Healy, clerk.

for the sum of eight hundred dollars ($800), subject also to a
869 lien by attachment for two hundred dollars of November 8th, A. D. 1881, Mark A. Blaisdell *vs.* Anna Hanbury, in attachment book, said county and State, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances:

To have and to hold the said premises above *and* described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said Anna Hanbury, an unmarried woman, party of the first part, for herself, her heirs, executors, and administrators, does covenant, grant, bargain, and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents she is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, & indefeasible estate of inheritance in law, in fee simple, and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, and
870 incumbrances of what kind or nature soever; and the above-bargained premises in the quiet and peaceable — of the said party of the second part, his heirs and assigns, against all and every other person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will warrant and forever defend, save and except as against said incumbrance and said lien, payment whereof are hereby assumed by said grantee as part of said purchase-money. And the said party of the first part hereby expressly waives and releases any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Massachusetts providing for the exemption of homesteads from sale or execution or otherwise.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ANNA HANBURY. [SEAL.]

Signed, sealed, and delivered in the presence of—
ANNA HANBURY.

(Between 16- and 17th lines from top of deed the words lot forty-seven (47) interlined before execution, in presence of the grantor.)

871 STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Michael Andrew Rorke, a notary public in and for said county, in the State aforesaid, do hereby certify that Anna Hanbury (an unmarried woman), personally known to me to be the same person

whose name is subscribed to the foregoing deed, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said deed as her free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twenty-eighth day of September, A. D. 1882.

MICHAEL ANDREW RORKE,
Notary Public in and for Cook Co., Ill.,
and his Notarial Seal.

STATE OF ILLINOIS, } ss:
Cook County, }

I, E. F. Klokke, clerk of the county court of Cook county, the same being a court of record, do hereby certify that Michael Andrew Rorke, Esq., whose name is subscribed to the proof or acknowledgment of the annexed instrument in writing, was at the time of taking such proof or acknowledgment a notary public in and for Cook county, duly commissioned, sworn, and acting as such and authorized to take the same; that I am well acquainted with his handwriting, and verily believe that the signature to the said proof or acknowledgment is genuine; and, further, that the annexed instrument is executed and acknowledged according to the laws of the State of Illinois.

872

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, the said county, this 28th day of Sept., 1882.

E. F. C. KLOKKE,
Clerk and the Court Seal.

October 7, 1882, at eleven o'clock and twenty-one minutes a. m., received, entered, and examined.

Attest: THOS. F. TEMPLE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, Lib. 1574, fol. 536.

Attest: THOS. F. TEMPLE, *Reg.*

Endorsed: Filed Dec. 19, 1882. Jno. J. Healy, clerk.

873 EXHIBIT HANBURY, E.

(Envelope postmarked "Boston, Oct. 9, 2.30 p. m., Mass., addressed")

Representation of
Young's Hotel,
Boston.

Mrs. Anna Hanbury,
1328 Michigan Av.,
Chicago, Ills.

(Letter enclosed in above.)

Young's Hotel, Boston.

BOSTON, *Oct. 9th*, 1882.

Mrs. Hanbury.

DEAR MADAME: I had a very pleasant trip—Grand Trunk R R. via Montreal to Boston. Called upon Mr. Bamford, who I find a live real estate man, with plenty of business. However, he found time to take me out to "Clarendon Hills," behind his trotter, Saturday eve., and showed me the lots and considerable of the environs of the town, which was very kind indeed.

The lady holding a mortgage with her husband (an Episcopal minister) was at his office this a. m. to rec-v- the money from me & cancel the mortgage.

It appears to be a mistake on your part concerning interest,
874 and as the matter is not urgent I delayed a few days & write you. Mr. Bamford's rec'pt for $24 that you gave me seems to be a mistake also, as the note shows $28 was paid, and they say they were to have 7% not paid in advance, and Mr. Bamford says Cheever was 8% in advance. So there is (besides the $15 for grass) to be paid $13, interest up to June, and since about $19; total, $32. I suppose this is correct, but ask your instruction in the matter.

Called upon Mr. Cottrell. He informed me that he has got a settlement of the attachment on very favorable terms, about $65, and then add, paying costs on both sides, etc., less than $100. Then he showed me your letter of instructions to him; that I was to pay $200 in all; 1st, Mr. B.'- claim, then his fee, &, if anything —, to go on the tax. I told him that I understood you to say that you had instructed him that the B. claim was 1st, & then the tax, and to save as much as possible for himself. I asked him how much his bill was against you, and he said about two years since he sent
875 you a bill, &c., &c., supposed it about $175, but if you were ready to pay it to scale it down liberally to $125. He said she will be satisfied & pay me; so I agreed to pay the $200 to him and trust to your honor to do what was — between us in the tax matter. I have not paid him but $100 yet, & if you are not satisfied please instruct me. I must admit that Boston has the most nice, hard streets to the acre that is to be found, with lovely hills and dales, but it is no place for a Chicago man. Mr. Charles H. Page owns most of the lots that you did not have in that subdivision; says it is 6

years since any house was built there—Clarendon Hills. R. R. trains about every ½ hour, only to- high fair-s now.

Yours respectfully, M. N. KNOWLTON.

P. S.—Please address me, Stamford, Fairfield county, Connecticut, care Alfred Hoyt.

Endorsed: Letter of Knowlton. Filed Dec. 19th, 1882. Jno. J. Healy, clerk.

876 EXHIBIT RORKE, E.

Bill.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Superior Court of Cook County, of the February Term, A. D. 1883. In Chancery.

ANNA HANBURY, Complainant,

vs.

LYMAN BAIRD, MINER NATHANIEL KNOWLTON, WILLIAM H. BRADLEY, Lewis H. Boutell, "The Unknown Owners," "The Unknown Owner," and Charles J. Shields and Emily Hoyt, Defendants.

$2,194.01. CHICAGO, *February* 23*d*, 1883.

Received from Anna Hanbury, the complainant in the above-entitled cause, per M. A. Rorke & Son, her solicitors of record herein, the sum of two thousand one hundred and ninety-four dollars and one cent ($2,194.01), said amount being deposited in said court by said complainant as a "fund of said court," to the credit of the above-entitled cause, under an order entered of record herein on the 21st day of February, A. D. 1883, granting her leave so to do within five days from that date.

[SEAL OF COURT.] JNO. J. HEALY, *Clerk.*

877 Endorsed: Receipt of clerk for $2,194.01.

878 EXHIBIT G, RORKE.

This indenture, made this fourteenth (14) day of February, in the year of our Lord one thousand eight hundred and eighty-three (1883), between Anna Hanbury, an unmarried lady, of the city of Chicago, in county of Cook and State of Illinois, party of the first part, and Michael Andrew Rorke, of the city of Chicago, in the county of Cook and State of Illinois, party of the second part, as trustee, as hereinafter specified (and in case of the death, absence, or removal from said county of Cook, refusal or inability to act of said party of the second part, then Frederick John Rorke, of said city of Chicago, shall be, and he is hereby, appointed and made successor in trust to said party of the second part under this deed, for the uses and purposes hereinafter expressed, with the same power and authority as said trustee), witnesseth:

That whereas the said Anna Hanbury is justly indebted to the indorsee of the notes next described in the sum of three thousand two hundred dollars, secured to be paid by her principal certain promissory note, bearing even date herewith, payable to the order of herself, thereon indorsed, three years after date, for value re-
879 ceived, with interest thereon at the rate of seven per cent. per annum, payable half-yearly, to wit, on the fourteenth (14) day of August and of February in each year until said principal sum is fully paid, both principal and interest being payable at the law office of M. A. Rorke & Son, and several installments of interest for said period of three years being further evidenced by six (6) interest notes or coupons of even date herewith;

And whereas the said party of the first part is desirous of securing the prompt and full payment of said promissory notes and interest that may accrue thereon, in whose hands soever the same may be:

Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar to her in hand paid by the said party of the second part, the receipt whereof is hereby confessed, has and does hereby grant, bargain, sell, and convey unto the said party of the second part, his successor in trust aforesaid, and his and their heirs and assigns, all the following-described lands and premises situate in the city of Chicago, in the county of Cook and State of Illinois, to wit: Lot number fifty-seven (57), in H. M. Tayler's subdi-
880 vision of block forty-three (43) of the canal trustees' subdivision of the west half and the west half of the northeast quarter (W. $\frac{1}{2}$ & W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$) of section seventeen (17), in township thirty-nine (39) north, range fourteen (14) east, of the third (3d) principal meridian, with the buildings and improvements thereon, subject to a party-wall agreement; also all that and those lots numbered one and two (1 & 2), in McKee's subdivision of lots numbered fifty-three (53), fifty-four (54), fifty-five (55), and fifty-six (56), in H. M. Tayler's subdivision of block forty-three (43) of the canal trustees' subdivision of the west half and the west half of the northeast quarter (W. $\frac{1}{2}$ & W. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$) of section seventeen (17), township thirty-nine (39) north, range fourteen (14) east, of the third (3d) principal meridian, situate in said city, county, and State, with the buildings and improvements thereon:

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his successors in trust aforesaid, and his and their heirs and assigns, forever; in trust, nevertheless, that in case of default of the payment of
881 the said promissory notes for principal or interest or any part thereof, according to the tenor and effect of said note, or in case any of the buildings or improvements on said premises shall be destroyed or injured or not be kept in good order and repair, or in case of waste or non-payment of taxes or assessments, or neglect to procure or renew insurance, as hereinafter provided, or in case of the breach of any of the covenants or agreements herein mentioned, then and from thenceforth it shall be lawful for said party of the

second part, or his successor in trust, or the person who may be appointed by the court to execute this trust, on application of the legal holder of said principal promissory note or either of them, to enter into and upon and take possession of the premises hereby granted or any part thereof, and to collect and receive all rents, issues, and profits thereof, and in his own name or otherwise to file a bill or bills, in any court having jurisdiction thereof, against the said party of the first part, her heirs, executors, administrators, and assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises, for the purposes herein specified,
882 by said party of the second part as such trustee or as special commissioner or otherwise, under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part or person who may be appointed to execute this trust, and three (3) per cent. on the amount of such principal, interest, and costs for attorneys' and solicitors' fees, and also all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon at eight per cent. per annum; then to pay the principal of said notes, whether due and payable by the terms thereof or the option of the legal holder thereof and interest due on said notes up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, her legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires to the purchaser or purchasers of said premises at such sale or sales; and it shall not be obligatory upon the purchaser or purchasers at
883 any sale made under the provisions of this trust deed to see to the application of the purchase-money.

And the said party of the first part, in consideration of the premises and of one dollar to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, upon the filing — any bill to foreclose this trust deed in any court having jurisdiction thereof, hereby authorize- and empower- James H. Roberts, or any attorney of any court of record, to enter her appearance in writing to any such bill of foreclosure, and as her attorney or solicitor irrevocably to waive the issuing and service of process, and to file an answer to such bill for foreclosure and sale and in her name, stating the amount that may then be owing on the said principal note and under the provisions of this trust deed for principal, interest, costs, taxes, insurance, attorneys' and solicitors' fees and other money expended under the provisions contained herein, whether the same be due by the terms of the said note or this trust deed or the option of the legal holder of said note, and to consent and agree to an immediate decree being entered *pro confesso* for the amount therein stated to be so due and owing in favor of the
884 said party of the second part, his heirs, executors, administrators, and assigns, and against the said party of the first part, her heirs, executors, administrators or assigns; and to consent and agree that an immediate sale of said premises may be made,

and to stipulate and agree that upon the entry of the decree confirming said sale a writ of possession may be issued by said court to put the said party of the second part, his successor, or person appointed by the court to execute this trust, in possession of said premises until the time of redemption expires, and to release all errors that may intervene in the entering of such decree or the proceedings under the same, and to agree that no appeal shall be taken or writ of error prosecuted from such decree.

And in case of the appointment by any court of a new trustee to execute the trusts hereby created the sum of seventy-five (75) dollars for the attorneys' or solicitors' fee of the petitioner in such proceeding and all other expenses of such appointment and the execution of said trust shall be allowed and taken from the proceeds of the sale of said premises and the rents collected from said premises.

885 And, in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part does hereby release and waive all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the lands and premises aforesaid and the proceeds of sale thereof and agree- to surrender up possession thereof to the said party of the second part, peaceably, on demand, upon default in payment of said note or any part thereof or the breach of any of the covenants herein contained to be kept by her or her heirs, executors, administrators, or assigns.

And the said Anna Hanbury, for herself and her heirs, executors, and administrators, covenants and agrees to and with the said party of the second part, his successor in trust hereinbefore named and their assigns, that at the time of the ensealing and delivery of these presents she is well seized of said premises in fee simple, and

886 has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid; that the same are free and clear of all incumbrances whatever, and that she will warrant and forever defend the same against all claims whatsoever, and that the said party of the first part will, in due season, pay all taxes and assessments on said premises and exhibit once a year, on demand, receipts of the proper persons to said party of the second part, showing payment thereof, until the indebtedness aforesaid shall be fully paid, and will keep all buildings that may at any time be on said premises during the continuance of said indebtedness insured in such company or companies as the holders of said note may from time to time direct, for such sum or sums as such company or companies will insure for, not to exceed the amount of said indebtedness, except at the option of said party of the first part, and will assign, with proper consent of the insurers, the policy or policies of insurance to said party of the second part as further security for the indebtedness aforesaid; and, in case of the

887 refusal or neglect of said party of the first part or either of them thus to insure or assign the policies of insurance or to

pay taxes, said party of the second part or his successor in trust or the holder of said notes or either of them may procure such insurance or pay such taxes, and all moneys thus paid, with interest thereon at eight per cent. per annum, shall become so much additional indebtedness secured by this deed of trust, and to be paid out of the proceeds of sale of the lands and premises aforesaid if not otherwise paid by said party of the first part.

In case of full payment of all the indebtedness aforesaid prior to any sale of the lands and premises above described or any part thereof and a performance of the covenants and agreements herein made to be performed by the said party of the first part, then a reconveyance to be made to the said party of the first part, her heirs or assigns, at her expense.

And it is stipulated and agreed that in case of default in any of said payments of principal or interest, according to the tenor and effect of said promissory note aforesaid or either of them or
888 any part thereof or a breach of any of the covenants or agreements herein by the party of the first part, her executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured and the interest thereon at the time of sale may at once, at the option (without notice thereof to said party of the first part, her heirs, assigns, or legal representatives) of the legal holder thereof, become due and payable and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And the said party of the second part or person appointed by the court to execute this trust may in case of any such default or breach of covenant take immediate possession of said premises and collect the rents and profits, as above provided, until the time of redemption shall expire under any sale that may be made by virtue of this trust deed; and the said party of the first part hereby expressly waives and releases to said party of the second part, his successor, or person appointed by the court to execute this trust, all rights which he now has or may hereafter have under any law of this State to retain possession of said premises after any such default or breach
889 of covenant as aforesaid until the time for redemption expires.

And if possession of said premises shall not be peaceably given, as above provided, to the said party of the second part, his successor, or person appointed by the court to execute this trust, he or they may immediately bring a suit or suits in ejectment or forcible detainer against the party of the first part, her heirs, executors, administrators, or assigns, in any court or courts having jurisdiction thereof to recover the possession of said premises or any part thereof; and the said party of the first part, in consideration of the premises, do hereby make, constitute, and appoint James H. Roberts or any attorney of any court of record to be her true and lawful attorney, irrevocably, for her and in her name, place, and stead, to appear in and before any court or courts where any such suit of ejectment or forcible detainer may be brought, in term time or in vacation, at any time after any such default or breach of covenant as aforesaid, to waive the issuing and serving of process or processes, and confess a

judgment or judgments of guilty in such suit or suits in ejectment or forcible detainer in favor of the said party of the second part,
890 his successor, or person appointed to execute this trust, together with costs, and for forty dollars attorneys' fees; and also to file an agreement in each of said suits that may be brought that no writ of error or appeal shall be prosecuted upon any judgment entered by virtue hereof, nor any bill in equity filed to restrain or interfere in any manner with the operation of such judgment or judgments or any execution or any writ of restitution issued or to be issued thereon, and to release all errors that may intervene in the entering up of any such judgment or judgments or issuing any execution or any writ of restitution thereon; and also to consent, stipulate, and agree that an execution or writ of restitution may issue immediately upon any such judgment, the said party of the first part hereby ratifying and confirming all that her said attorney may do by virtue hereof.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

ANNA HANBURY. [SEAL.]

Signed, sealed, and delivered in the presence of—
FRANK H. DICKEY.

STATE OF ILLINOIS, } ss:
County of Cook, }

891 I, Frank H. Dickey, a notary public in and for said county, in the State aforesaid, do hereby certify that Anna Hanbury, an unmarried lady, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this fourteenth day of February, A. D. 1883.

[Frank H. Dickey, Notarial Seal, Cook Co., Ill.]

FRANK H. DICKEY,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 14th day of February, A. D. 1883, as document No. 448,371, and recorded in Book 1278 of Records, at page 64.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this 28th day of February, A. D. 1883.

[SEAL.] JAMES W. BROCKWAY, *Recorder.*

892 EXHIBIT F, RORKE.

This indenture, made this twenty-fifth day of June, in the year of our Lord one thousand eight hundred and seventy-seven, between Blanche D. McKee, wife of William H. McKee, and the said William H. McKee, her husband, of the city of Chicago, county of Cook and State of Illinois, party of the first part, and Lyman Baird, of said city of Chicago, party of the second part—

Whereas the said William H. McKee and Blanche D. McKee are justly indebted unto the legal holder of the principal promissory note hereinafter described in the principal sum of eighteen hundred dollars ($1,800), secured to be paid by the certain principal promissory note, number six, of the said William H. McKee and Blanche D. McKee, bearing even date herewith, in and by which said principal note the said William H. McKee and Blanche D. McKee promise to pay to the order of the said William H. McKee the principal sum of eighteen hundred ($1,800) dollars five years after date thereof (without grace), with interest thereon at the rate of nine per centum per annum, to be paid half-yearly, to wit, on the twenty-fifth day of each of the months of June and December in each and every year until the said principal sum shall be due, and with in-
893 terest thereon at the rate of ten per centum per annum after due, payable semi-annually, which said interest payments, until the said principal sum shall become due, are specified in and further secured by ten coupon notes given therewith, which said coupon notes are payable with interest after due at the rate of ten per centum per annum, and the said payments, both of principal and interest, are to be made at such place in the city of New York, in the State of New York, as the legal holders of said principal note may from time to time in writing appoint, and in default of such appointment, then at the Bank of America, in said city of New York, in and by which said principal note it is agreed that if default be made in the payment of any of the interest on the said principal sum, payable half-yearly as aforesaid, and any portion thereof shall remain due and unpaid for the space of twenty days after the same shall become due and payable as aforesaid, or if any tax or assessment upon the premises described herein remain unpaid for the space of ninety days after the same shall become due and payable, then and in that case, after the said twenty or ninety days, the principal sum above mentioned, with all arrearages of interest thereon, shall, at the option of the legal holder of said principal note, at once become due and payable without notice, and shall be collectible im-
894 mediately or any time after such default, anything therein-before contained to the contrary notwithstanding, and that if the time for the payment of the principal sum aforesaid shall be extended the provisions of said note shall continue in force during the period of such extension and until all the sums thereby secured are fully paid:

Now, therefore, this indenture witnesseth: That the said party of the first part, for the better securing the payment of the said princi-

pal sum of money, with interest thereon, according to the true intent and meaning of the said principal note and of the said interest notes, and the prompt fulfillment of the covenants on the part of said first party herein contained, and also in consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, his successors in trust and assigns, forever all the certain lot, piece, or parcel of land situate, lying, and being in the city of Chicago, county of Cook and State of Illinois, and known and described as follows, to wit:

Beginning at a point in the east line of Tompkins street twenty (20) feet south of the northwest corner of lot fifty-six (56), in H. M. Tayler's subdivision of block forty-three (43), in the canal
895 trustees' subdivision of the west half and west half of north-east quarter of section seventeen (17), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian, and running thence south, on said east line of Tompkins street, twenty (20) feet; thence east, parallel to the north line of said lot fifty-six (56), one hundred and twenty-five and four-tenths (125.4) feet, more or less, to an alley; thence north, on west line of said alley, twenty (20) feet; thence west, parallel to said north line of said lot fifty-six (56), one hundred and twenty-five and four-tenths (125.4), more or less, to the place of beginning—the north and south lines of the tract of land hereby intended to be conveyed coincide with lines running east and west through the middle of the partition walls separating the house erected on said tract from those erected on the lots north and south of and adjoining the same—together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, and interest, dower and right of dower, property, possession, claim, and demand whatsoever,
896 as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel thereof, with the appurtenances:

To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his successors in trust and assigns, forever; in trust, nevertheless, that if default shall be made in the payment of the said principal sum of money or the interest that may accrue thereon or any part thereof when the same become due and payable, either by election of the legal holder of the said principal note, under the provisions of the said note or of this instrument, or by the maturity of the said note; or if the said party of the first part, their heirs, executors, or administrators, shall at any time until said principal sum and all arrearages of interest thereon shall be fully paid fail in anywise to fully keep and perform all and singular the covenants and agreements hereinafter contained, that then and from thenceforth it shall be lawful for the said party of the second part or his

successors in trust, on application of the legal holder of said principal note, with or without a previous entry upon said premises, to sell and dispose of the premises hereby granted or intended so to be and all right, title, benefit, and equity of redemption of
897 the said party of the first part, their heirs or assigns, therein, at public auction, at any place in the city of Chicago, in the State of Illinois, that may be specified in the notice of such sale, to the highest bidder for cash, having first given notice of the time and place of such sale by publication once in each week for four successive weeks, the first publication to be at least thirty days before the day of sale, in any newspaper or other paper authorized by law to publish legal notices that may then be published in the said city of Chicago in the English language, personal notice of such sale to said party of the first part, their heirs, executors, administrators, or assigns, or any and all persons claiming by, through, or under them, being hereby expressly waived and excused, and in the name or names of the said party of the second part or his successors in trust to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed or deeds of conveyance for the premises sold, which deed or deeds shall in all cases be *prima facie* evidence of the truth of the recitals therein, and that such sale was in all respects according to the requirements of the statute and of this deed, and out of the money arising from such sale to pay and retain—

First. All charges or expenses made or sustained on ac-
898 count of this trust, including the expenses of such advertisement, sale, and conveyance, and a reasonable sum as attorneys' fees, commissions on such sale, and all moneys that the said party of the second part or his successors in trust or the legal holder of said principal note may have advanced for insurance, taxes, and redemption from tax sales on the said premises, and for the removal of prior liens, and for abstracts of title to said premises, and for removal of any cloud upon the title thereof, or to protect his or their title thereto in any manner whatever, with interest on such advances at ten per centum per annum.

Second. All of said principal sum of money and accrued interest thereon that may at the time of such sale remain unpaid, whether due or not due, and interest on the due and unpaid interest coupons given with said principal note or afterwards at the rate of ten per cent. per annum.

Third. Rendering the overplus, if any there be, unto the said Blanche D. McKee, her executors, administrators, or assigns, upon reasonable request.

And the said party of the second part or his successors in trust may adjourn such sale from time to time and for such time and upon such notice as he or they may judge best, and may also at such sale sell the said premises entire, without division, or in
899 parcels, in his or their discretion, and it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase-money, which sale so made shall be a perpetual bar, both in law and equity, against the said party of

the first part, their heirs, and assigns, and all persons claiming or to claim the said premises or any part thereof by, from, through, or under them or any of them, and the said party of the first part agree to surrender possession of the said premises to the purchaser or purchasers at such sale peaceably on demand.

And in the event that said party of the second part or his successors in trust or the legal holder of said principal note shall expend any money, either to save said premises or any part thereof from any sale for taxes or assessments or to redeem the same from any such sale, or to remove any prior liens thereon or any cloud upon the title thereof, or in the employment of attorneys or otherwise to protect the title or possession of said premises, or in the defense of any suit wherein the party of the second part or his successors or assigns may be made defendants, or for such abstracts of title to said premises as said party of the second part, or his succes-
900 sors in trust, or the legal holder of the said principal note may deem necessary or expedient, then all such moneys so expended shall be a new and additional principal sum of money, secured by this instrument, and shall be payable and may be collected immediately or at any time thereafter, with interest thereon at the rate of ten per centum per annum from the time of so paying the same; and, in case of such payment of money to save said premises or any part thereof from any sale for taxes or assessments, or to redeem the same from any such sale, the said party of the second part and his successors in trust and the legal holder of said principal note shall not be obliged to inquire into the validity of such taxes or assessments or of the sale therefor; and, in case of the foreclosure of this deed of trust by proceedings in court, the said party of the second part or his successors in trust or the legal holder of said principal note may recover, in addition to the said principal sum and interest due on said note, the interest on the due and unpaid interest coupons given with said principal note, or afterwards, at the rate of ten per cent. per annum, and a reasonable sum as his solicitor's fee, and all charges and expenses made or sustained
901 on account of this trust, including all moneys that the party of the second part or his successors in trust or the legal holder of said note may have advanced for insurance, taxes, and redemption from tax sales on said premises, and for removal of prior liens, or of any cloud upon the title thereof, and for abstracts of title to said premises, or to protect his or their title thereto in any manner whatever, with interest on such advances at ten per cent. per annum.

And the said party of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his successors in trust and assigns, *and* at the time of the ensealing and delivering of these presents the said Blanche D. McKee is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in law, in fee simple, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner and form aforesaid, and that the same are free and clear of all former and other grants, bargains, sales, liens, taxes,

assessments, and incumbrances of what kind and nature
902 soever; and the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his successors in trust and assigns, against all and every other person and persons lawfully claiming or to claim the whole or any part thereof the said party of the first part will warrant and forever defend.

And that until the said principal sum of money and all arrearages of interest thereon shall be fully paid said Blanche D. McKee will pay or cause to be paid all taxes and assessments on the said premises when the same become due and payable, and will remove all other adverse claims, clouds, and incumbrances thereon; and that she will not do or permit to be done to, in, upon, or about the said premises anything that may in anywise tend to diminish the value thereof or to weaken or impair the security intended to be effected under and by virtue of this instrument.

And that she will keep all buildings upon the said premises insured in such good and reliable insurance company or companies as the said party of the second part or his successors in trust may select, for the insurable value thereof, and, if practicable, for the term of the loan. The policy or policies of such insurance shall
903 be fully paid for before delivery, and to be either in the name or names of the said party of the second part or his successors in trust, or to be so drawn that the loss, if any, shall be payable to him or them and to be held by him or them as additional security hereto; and in default of so doing the said party of the second part or his successor in trust, at his or their option, may effect such insurance in his or their name or names or otherwise and the premium money paid therefor shall be a charge upon said premises and shall be secured by this instrument in the same manner as the said principal sum of money above mentioned is secured, and such premium money shall be paid by the said Blanche D. McKee, her heirs and legal representatives, to said party of the second part or his successors in trust on demand, and may be collected at any and all times after the same shall have been paid, with interest thereon at the rate of ten per centum per annum from the time the same shall be advanced; and in case that any policy or policies of insurance on said buildings shall not be written in the name of the said party of the second part or his successors in trust, nor
904 be so drawn that the loss, if any, is made payable to him or them, and in case any such policy or policies are not held by him or them, it shall be understood, nevertheless, that they are to be held as collateral security hereto, and that in case of loss by fire said Blanche D. McKee or her assigns will at once make due proof of loss and do all things required by the said policies to make the amounts thereof due and payable.

And in case of default in payment of the interest aforesaid or any part thereof for twenty days, or of the taxes and assessments aforesaid for ninety days, or of the said principal sum of money or any part thereof when the said interest, taxes, and principal sum of money, respectively, shall become due and payable, or in the payment of

said insurance premium, or of a breach of any of the covenants or agreements herein mentioned, or if there exist any claims, liens, or incumbrances on said premises that are prior to this deed, the whole of said principal sum of money and the interest thereon to the time of sale may at once, at the option of the legal holder of said principal note, without notice, become due and payable and the said
905 premises be sold or foreclosure proceedings hereon commenced in the same manner and with the same effect as if the said indebtedness had matured.

A reconveyance of said premises to be made to said Blanche D. McKee, her heirs or assigns, at her or their expense, on full payment of the indebtedness aforesaid and performance of the covenants and agreements made herein by the said party of the first part.

And in case of the death, absence, inability or refusal to act of said party of the second part, then William H. Bradley, of the said city of Chicago, shall be, and he hereby is, appointed and made successor in trust to said party of the second part under this deed, with like power and authority, and said premises shall thereupon become vested in said successor in trust for the uses and purposes aforesaid.

And in case of the death, absence, inability or refusal to act of said party of the second part and of the said William H. Bradley, then Lewis H. Boutelle, of said county of Cook, shall be, and he hereby is, appointed and made successor in trust to said party of the second part and the said William H. Bradley under this deed,
906 with like powers and authority, and said premises shall thereupon become vested in said successors in trust for the uses and purposes aforesaid.

And said party of the first part hereby expressly waives and releases all rights under and by virtue of the homestead exemption laws of this State in and to the above-described premises.

In witness whereof the said party of the first part have hereunto set their hands and seals, at the said city of Chicago, the day and year first above written.

BLANCHE D. McKEE. [SEAL.]
WILLIAM H. McKEE. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Cook, City of Chicago, }

I, Charles A. Schmidt, a notary public in and for and residing in the said county and State aforesaid, do hereby certify that Blanche D. McKee and William H. McKee, her husband, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their fee and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

907 Given under my hand and notarial seal this 29th day of June, A. D. 1877.

[Seal Charles A. Schmidt, Notary Public, Chicago, Ill.]

CHARLES A. SCHMIDT,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 5th day of July, A. D. 1877, as document No. 141,447, and recorded in Book 717 of Records, at page 171.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this seventh day of February, A. D. 1883.

JAS. W. BROCKWAY, *Recorder.*

908 Afterwards, to wit, on the twenty-second day of December, in the December term of said court, 1884, in the record of proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

EMILY HOYT
vs.
ANNA HANBURY *et al.* } In Chancery.

Now comes the complainant, by her solicitor, and presents Joseph H. Andrews as security on her appeal bond herein, who is duly sworn, qualified, and approved by the court; and thereupon it is ordered that the defendants Hanbury and Rorke have fifteen days in which to ascertain whether or not the signature of the complainant attached to said appeal bond is genuine.

909 Afterwards, to wit, on the thirty-first day of December, 1884, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

In the Circuit Court of the United States for the Northern District of Illinois. In Equity.

EMILY HOYT, Plaintiff,
vs.
ANNA HANBURY, MICHAEL ANDREW RORKE, LYMAN BAIRD, CHARLES J. SHIELDS, WILLIAM LINDSLEY, SARAH L. ROBB, RANSOM A. GIVENS, ALONZO G. COLLINS, Impleaded with MINER N. KNOWLTON, Defendants.

Know all men by these presents that we, Emily Hoyt, as principal, of the city of Stamford, in the State of Connecticut, and Joseph H. Andrews, as surety, of the city of Chicago, in the State of Illinois, are held and firmly bound unto Anna Hanbury, Michael Andrew Rorke, Lyman Baird, Charles J. Shields, William Lindsley, Sarah L. Robb, Ransom A. Givens, and Alonzo G. Collins, all of the city

of Chicago aforesaid, in the sum of one thousand dollars, to
910 be paid to the said Anna Hanbury, Michael Andrew Rorke, Lyman Baird, Charles J. Shields, William Lindsley, Sarah L. Robb, Ransom A. Givens, and Alonzo G. Collins, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 15th day of December, 1884.

Whereas the above-named Emily Hoyt hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the northern district of Illinois, of date November 21st, 1884, dismissing the bill of complaint in said cause for want of equity, etc., as to all defendants except said Knowlton:

Now, therefore, the condition of this obligation is such that if the above-named Emily Hoyt shall prosecute her said appeal to effect and answer all damages and costs if she fail to make her plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

EMILY HOYT. [SEAL.]
JOSEPH H. ANDREWS. [SEAL.]

Sealed and delivered in presence of—
Witnesses as to signature of Emily Hoyt:
CHARLES O. MILLER.
FRANK E. DE CAMP.

911 Witnesses as to signature of Joseph H. Andrews:
JOHN A. PRINDIVILLE.
PETER KOEHLER.

Approved:
W. Q. GRESHAM.
Dec. 31, 1884.

Endorsed: Filed Dec. 31, 1884. Wm. H. Bradley, clerk.

912 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Emily Hoyt is the complainant and Anna Hanbury, Miner N. Knowlton, *et al.* are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this thirtieth day of September, 1885.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 380. Louis B. Shields, administrator of Emily Hoyt, deceased, appellant, *vs.* Anna Hanbury, Michael Andrew Rorke, Lyman Baird, *et al.* Filed October 12, 1885.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 109.

LOUIS B. SHIELDS, ADMINISTRATOR OF EMILY HOYT, DECEASED, *Appellant*,

vs.

ANNA HANBURY, MICHAEL ANDREW RORKE, LYMAN BAIRD, ET AL., *Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT

OF

THEO. E DAVIS, *Solicitor.*

H. C. CADY, *of Counsel for Appellant.*

BRIEF AND ARGUMENT

OF

THEO. E DAVIS, *Solicitor.*

H. C. CADY, *of Counsel for Appellant.*

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.—No. 109.

LOUIS B. SHIELDS, ADMINISTRATOR OF EMILY HOYT—, DECEASED.—APPELLANT.

vs.

ANNA HANBURY, MICHAEL ANDREW RORKE, LYMAN BAIRD *et al.*—APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT

OF

THEO. E. DAVIS,

Solicitor for Appellant.

MAY IT PLEASE YOUR HONORS:

This is a suit in Equity by Bill filed February 15th, 1883, in the Circuit Court of the United States, for the Northern District of Illinois, by Emily Hoyt, in her life time, against Anna Hanbury, Miner N. Knowlton and Lyman Baird, Trustees, *et al.*, wherein the Complainant sought for an accounting of Miner N. Knowlton, her agent

and attorney in fact—for certain money entrusted to him; and for an injunction to restrain the defendants from selling or otherwise disposing of certain lands in the City of Chicago, alleged to have been purchased with her money; and to set aside a certain agreement and deeds of Conveyance of said property; which her said agent Knowlton had executed without her knowledge or consent to defendant Hanbury in exchange for certain property near Boston, Massachusetts. Said Bill alleging that the Chicago property had been purchased with the money of Complainant, and the deeds thereof had been taken in the name of said Knowlton; and that defendant Hanbury, by fraud and false representations, had procured the exchange of said properties, whereby Complainant had been injured and damaged to the extent of Twelve Thousand Dollars ($12,000). The Bill prayed for the appointment of a Receiver to collect the rents and profits of the Chicago property and for a conveyance of the property to Complainant, Hoyt.

Upon the trial of said cause the Court below, upon the issues made and the voluminous testimony taken before the Master and others, gave judgment for Complainant Hoyt against defendant Knowlton of $7465.72 and dismissed her bill as to all the other defendants.

The Complainant then and there filed her petition for a rehearing, which the Court denied. Hence the appeal to this honorable Court.

To revise the decision, judgment and decree of the Court below, Louis B. Shields, Administrator of the

Estate of Emily Hoyt, late deceased, here presents by his solicitor, the following assignment of Errors, and the points relied upon for such reversal.

ERRORS.

First.— The Court below erred in rendering judgment against one of the defendants as a Trustee and dismissing Complainant's bill as to all other defendants.

Second.—The Court below misconceived the history of the case and the nature and importance of the evidence bearing upon the charge of the fraud and false representations on the part of the defendant Hanbury in procuring the exchange of properties.

Third.—The Court below denied to the Complainant the only substantial relief asked for, viz:—the recovery of her Chicago property, which had been purchased with her money, because one of the defendants had, without her knowledge, taken the title to said property in his own name, and in attempting to exchange the same with another defendant for other property, he had been victimized by fraud and false representations.

ARGUMENT.

First.—We insist that a Court of equity takes jurisdiction to preserve and prevent the misapplication of trust funds; and that after establishing the trust by overwhelming testimony before the Master, as shown by this Record, the Court below should have found for Complainant. The Court committed a palpable error in holding that "A tender and demand by the Complainant was indispensable to her rights of action," because the Complainant never had title papers to either properties; either before or after the exchange of properties, and it was not in her power to tender to Mrs. Hanbury a reconveyance without an order of Court upon Knowlton or the Master. Hence the *logic of such finding is that Complainant must have performed an impossibility* in order that *she might have the right of action against defendants.*

Second.—The Court below has dismissed Hanbury and Rorke *et al.*, without adjudicating all the rights of the Complainant presented and involved in the case, and left $2194.01 of Complainant's funds still in litigation and tied up by the injunction of Hanbury *vs.* Baird, Knowlton and Complainant.

Third.—The answer of Hanbury and Rorke—pleading *bona fide* purchase for value, is inconsistant with Hanbury's cause of action against Baird, Knowlton and Complainant to reform and specifically enforce the unexecuted agreement in dispute.

Fourth.—The Complainant had the right to elect to pursue and recover the trust property; and the Court be

low denied Complainant this right and only granted her a personal judgment against Knowlton for a part of the trust funds claimed and set forth in Complainant's bill and involved in the unexecuted and disputed agreement.

We shall be amazed if such decree can stand inspection, much less a careful investigation. And while having great respect for the ability and usual candor of the Court below, we can only account for the manifold errors in his oral opinion and decree by the fact that his Honor labored under several disadvantages one of which was the voluminous manuscript Record of the case. The interlocutory decree was entered by the District Judge presiding nearly two years previous, and the investigation and the conformation of two reports of the Master and two Motions for a Receiver and injunction, and all the attending Motions and orders were heard and entered before his Honor was appointed to succeed the Hon. Judge Drummond.

We present with our brief a history of the case:

The complainant employed the defendant, Knowlton, who is her brother, to care for her property, viz.: certain buildings known as Nos. 392 and 394 South Clark Street, Chicago, etc. He had collected rents for a series of years from this property for her, and she had allowed the funds thus accruing to accumulate and remain in his hands. He had invested them without her knowledge or consent in his own name, in three houses and lots, known as Nos. 18, 20 and 22 Winthrop Place, Chicago, when he met the defendant, Hanbury, and was induced to enter with her into a contract for an exchange, she to take the Winthrop Place property, and assume an incumbrance of $1,800 and interest due on one of the lots, viz.: No. 22, and he to receive her 27 unimproved lots, said to be at Clarendon Hills, a station on the Boston and Providence Railroad, about six miles from the State House, in Boston, Massachusetts, and assume incumbrances thereon to the sum of $1,000.

An agreement in writing for an exchange, was made and dated Sept. 8, 1882; Knowlton executed warranty deeds of the Winthrop Place property to Hanbury, Sept. 28, 1882, while she transferred to him the Boston lots on the same day.

He filed a bill in the Superior Court of Cook County, Illinois, to rescind the sale and exchange etc., on the 3rd day of November, 1882, alleging misrepresentation on her part as to the cost, location, character, situation and value of the Boston lots.

She had, as part of the purchase money, assumed an encumbrance of $1,800 on No. 22, one of the Winthrop Place houses.

See Record, Master's report page 24.

Knowlton had purchased this incumbrance with complainant's funds; it was in the form of notes and a trust deed to Lyman Baird. Knowlton had transferred and transmitted these securities to the complainant.

Knowing nothing of Knowlton's investment of her funds, in the purchase of the equity of redemption of No. 22, aforesaid, the complainant, in Jan. 1883, sent the trust deed and notes to Mr. Baird, the trustee, with directions to collect or to foreclose the same; he accordingly advertised the sale, pursuant to the power in the trust deed, the notes having matured in June, 1882.

But on the eighth day of February, 1883, defendant Hanbury filed her bill in the Superior Court, aforesaid, claiming that it was a part of the agreement in making the exchange with Knowlton, that this incumbrance was to be but $1,800, and was to be extended, so as to be payable in the future at a reduced rate of interest.

She asked to have the contract so construed and reformed, and that Knowlton be compelled to perform it as modified, and for an injunction against the sale by the trustee.

The injunction issued.

This caused an investigation on the part of complainant, when she first learned that her funds were involved in these controversies between Knowlton and Hanbury.

The complainant had then no alternative but to bring this suit in the Federal Court against them both, or run

the risk of losing her money which had thus become jeopardized.

Hence, on the 15th day of February, 1883, Complainant filed her bill in this case.

We discovered, shortly after she had filed her bill, that Hanbury had given a trust deed on the Winthrop Place lots, securing her note for $3,200, payable to her own order, to her senior counsel Michael Andrew Rorke, so we amended the bill to make him and the tenants of the Winthrop Place houses, who had attorned to defendant Hanbury, party defendants. We also made Lyman Baird trustee, a party defendant.

Knowlton filed his answer, substantially admitting the agency and the investment of complainant's moneys as alleged.

On his answer on February 23, 1883, we took a decree against him for an accounting with reference to the Master under which he has accounted, and the Master has reported. We have established the trust.

(Record, pp. 19 to 25.)

Williams v. Brown, 14 Ill., 200.
Sheldon v. Harding, 44 Ill., 68.
Perry on Trusts, sec. 127.

I.

Our bill in this case was ample and complete notice to defendants Hanbury and Rorke of this trust, resulting though it be; Mrs. Hoyt's equity is superior to theirs, because the contract of exchange had not been fully carried out. Defendant Hanbury had not fully paid the stipulated consideration for the exchange; viz.: the $1800 and interest past due when the contract was made, which she assumed.

After we filed our bill here, and on the 21st day of February, 1883, the sum of $2,194.01 was by her paid into court, in her case in the Superior court *to the credit of the cause;* but this was after full notice by our bill and the subpœna in this case. Hence, it was too late, if it could have been otherwise of any avail whatever.

1. The transaction between Knowlton and Hanbury was *in fieri;* our bill stayed the matter; it became her duty not to proceed further with the transaction, because it could not be carried out without injury to the complainant.

Union Canal Co. v. Young, 1 Wharton, 410.
Palmer v. Williams, 24 Mich., 328.
Brown v. Welch, 18 Ill., 343.
Keys v. Test, 33 Ill., 316.
Pinfield v. Dunbar, 64 Barb., 239.

2. The contract as claimed by her is not such an one as equity would specifically enforce.

"When equity takes jurisdiction to enforce a specific performance of contracts, it is within the sound discretion

of the chancellor. To entitle a party to a decree for a specific performance of the agreement, it must be reasonable, fair and equitable. If wanting in any of these particulars, relief should never be granted. It is only on the principle that it is unjust and inequitable to permit the contract to remain unexecuted that a court of equity assumes power to enforce it."

"Again, the court should never compel the performance of a contract which would involve the breach of duty of an officer or a trustee, or the perversion or destruction of trust funds or property. A court of equity takes jurisdiction to preserve and prevent the misapplication of such a fund."

Tamm v. Lavalle, 92 Ill., 263.

3. The only defense here, which could avail the defendant Hanbury is that of *bona fide* purchaser for value.

To sustain this character, it is essential that she should have paid the price in full, and received a conveyance; and notice while the transaction is incomplete in either particular will not only preclude any further step, but invalidate what has already been done.

Auketel v. Converse, 18 Ohio, N. S. 11.

Union Canal Co. v. Young, 1 Wharton, 410, 452.

HANBURY'S BILL TO REFORM THE CONTRACT.

Seeking to reform the contract on which she bases the claim of *bona fide* purchaser, and to compel a specific performance of it, she was in no condition to plead this defense; she is unwilling to perform on her part.

Tobey v. Foreman, 79 Illinois, 489.

She has not performed it, as it was actually made; as against Mrs. Hoyt, she cannot insist upon either a modification or a specific performance, after notice of Mrs. Hoyt's equities.

Hence at our election, under the doctrine of notice, we are entitled to a rescission.

4. Under these circumstances, has this court any other alternative but to rescind the transaction in toto, and place the parties in statu quo?

How would this prejudice defendant Hanbury? Return to her the Boston lots, take from her the Winthrop Place property, relieve her from the payment of the disputed sum, the $1,800 and interest, require her to account for the cash received of Knowlton, and in rents, issues and profits, etc., and has she been in the least damnified?

5. Compel us to receive the Boston lots, worth nothing above the incumbrance, and to accept the $1,800, and interest at 8 per cent. at some indefinite time in the future, less $341, as she claims in her bill against Baird and Knowlton, and what is there left for us? This would subvert the trust which we have established; we apprehend these parties in a quarrel—by the ears over our property; we think that we are entitled to superior equities. This trust arose *ex male fio;* no laches can be imputed to us.

Martin v. Sale, 1 Bailey's Eq. 11.
Foust v. Martin, 3 S. & R., 423, 430.

Defendant Rorke is in no better position than defendant Hanbury; he knew, as her solicitor, that she was not a *bona fide* purchaser; that she had not performed her

agreement with Knowlton. He put his money, the $3,200, into the case with full knowledge of all the facts, and was well versed in the rules of law, which we invoke. The bill of complaint in this case came therefore in apt time to intercept the consummation of the agreement between our agent Knowlton, and defendant Hanbury, of date September 8, 1882, and invalidated at our election everything which had been done between them; and between Mrs. Hanbury and Mr. Rorke. The superior equity of the complainant under all the authorities must prevail.

FRAUD.

The false representations are shown by the evidence and the misrepresentation is admitted. The 27 Boston lots are not where Mrs. Hanbury represented them to be; this constituted the whole difficulty in the case between her and Knowlton.

Cox v. Montgomery, 36 Ills., 396.
Mitchell v. McDougal, 62 Ills., 498.
Allen v. Hart, 72 Ills., 104.
Mitchell v. King, 77 Ill., 462.
Frisby v. Ballance, 4 Scam., 287.
Fish v. Leser, 69 Ills.; 394.

The complainant having unwitingly furnished the money upon which these parties were litigating, had no other alternative but to enter her bill here for relief against them both, and if necessary "try-out" the question of the good faith of the transaction between Knowlton and Madam Hanbury.

Especial attention is called to the case of Cox *vs.* Montgomery, 36 Ill., 396, above cited in which a bill to rescind a contract for exchange of properties on account of the fraud and false representations regarding the yearly taxes paid upon the land in question was sustained. This case like the one at bar was tried in Illinois and they seem to be *almost identical.*

When the exchange was made, it was, so far as they were concerned, solely and entirely between Anna Hanbury and Miner N. Knowlton. He dealt with her as for himself; the property here stood in his own name of record, and she had doubtless never heard of the complainant or her equities here, until subpœna was served on her, and the bill was read to her in this case.

Therefore, the issue of fraud is almost precisely as if it were between the two defendants, Knowlton and Hanbury; we have so treated it and shaped our pleadings and adduced the proofs to meet it.

Knowlton, in view of this cause, was obliged to dismiss his bill in the Superior Court, and Mrs. Hanbury was obliged to make the complainant a party to her bill in said court; whereupon we completed the issues in that cause, making them identical with those in this case, and by transcript brought that cause here to abide the event of this suit.

FIRST CHAPTER OF THE HISTORY.

It is undisputed that Miner N. Knowlton first met Anna Hanbury at the store of Buck & Rayner, by appointment brought about by a personal in the Chicago

Tribune, inserted by her, seeking for a loan of money on valuable diamonds.

(Record, page 284.)

They met there for the first time June 28, 1882; he loaned her $400 on her diamonds on the next day, receiving them as collateral security in pledge.

He was a carpenter, having in hand here his sister's property and moneys.

Mrs. Hanbury had, it seems, at one time inherited from a former husband a fortune of about $100,000, but which had been dissipated; she was keeping a boarding-house at 281 Michigan avenue; the rent was $100 per month; the furniture was mortgaged for its full value, she had already borrowed $300 by a pledge of these same diamonds, which was past due; she was "very sensitive in regard to this loan."

(Record, page 284.)

Failing to pay the interest on the loan he called to see her, when she first mentioned that she was the owner of real estate in Boston, Mass. She produced two deeds describing this property.

First. One from Charles J. Page and James H. Page and wives to Harvey A. Whiting, dated May 5, 1872, conveying 28 lots therein described, as at Clarendon Hills, etc., in consideration of $21,000.

Second. One from said Whiting to Anna Hanbury, dated July 24, 1876, for 27 of the same lots, in consideration of $19,962.27.

Upon these lots there was then a mortgage of $800; taxes unpaid; an attachment lien, etc., making $200 more, or incumbrances to about the sum of $1,000.

She borrowed an additional $100 of Knowlton after he learned of this property, without security.

Claiming to be a woman of property, she thus gained the confidence of Knowlton. She produced the deeds as evidence of her wealth.

To relieve her then present necessities she consulted with Knowlton as to the best plan. He examined the deeds; took them for a day or two, and wrote to R. Heber and S. R. Knight & Co., of Boston, to learn what could, if anything, be done with this property in Boston, solely in her behalf. We insist that the letters of Knowlton to Heber clearly show, that the object of the writer was to get money by the mortgage or sale of the 27 lots, he describes as at "Clarendon Hills." *Hanbury* testifies, page 192, Int. and Ans. 2 and 3. "The first time "I spoke to Mr. Knowlton of my property was to either "raise the mortgage or dispose of some of it;" and page 209, Ans. 1 and 2. "On the 9th, I think, I spoke of "mortgaging or selling a portion of it, and gave him the "deeds on the 10th;" and page 241, Ans. 3 and 4, "I "gave him those deeds for that purpose."

Knowlton testifies, page 286, Ans. 5. "Hanbury "asked if I could assist her in getting a loan on the Boston "property or selling it, and I told her I would endea-"vor to do so." Page 287, Ans. 7. "She gave me the "deeds, so that I could write and assist her in obtaining "a loan on the property described." Page 317, Ans. 11.

"About the 12th, I wrote letters to Boston to aid her in "obtaining money to pay what was due me and assist her "with her house in payment for the furniture." Page 323, Ans. 4. "It was Hanbury's idea either to mort- "gage or sell the Boston property up to the time of writing "those letters, and I wrote those letters with that view "and intention." Between the writing of those letters by Knowlton and the receipt of the answers thereto, the idea of the exchange between Knowlton and Mrs. Hanbury seems to have had its origin. In writing these letters he made no inquiry as to the location of these lots at all; he understood they were at Clarendon Hills, and that Clarendon Hills was a station on the Boston & Providence Railroad, about six miles from Boston. This was the controlling idea as to the situation of the property.

The letters (see Record p. 288) are very unsatisfactory.

Knowlton says they were "so unfavorable we ended all talk," etc.

Hanbury testifies—Record page 171, "I told him I should not make the exchange on those conditions—That we would drop the matter and we did drop the matter."

(Record, pp. 289 and 330.)

Hanbury says "I supposed it was dropped" etc., (Record page 196) "after the letter came on that afternoon."

(See also Record, page 196.)

Knowlton had loaned her $500, and of course was interested in getting it back. She claims that he urged the exchange. He sought to aid her, and believed her to be truthful, and that she had invested the sum of about $20,000 in the property, as she alleged.

MISREPRESENTATION AS TO LOCATION.

Hanbury admits that she represented the lots as at Clarendon Hills—her statements, representations, deeds and plat all prove it. She testifies (page 143):—

"Clarendon Hills lies six miles West of Boston, on the main line of the Providence Railroad, six miles from the State House. Clarendon Hills is a new part of Boston (23rd Ward, West Roxbury)."

This misrepresentation consists in the fact—fully proven and plain to be seen on the map of Boston—that Clarendon Hills is not in Boston—not in the 23rd Ward—not in West Roxbury—but is a station in the town of Hyde Park on the Railroad, 1½ miles distant by the nearest public street from the Page Subdivision (see Record, page 61), which is situated in the most extreme and inaccessible hills in West Roxbury, latterly annexed as the 23rd Ward of the city of Boston.

Surveyor Davis testifies (Record, page 121) "elevation is 148 feet at the intersection of Dale and Poplar Streets" which is the lowest point in the Page Subdivision, these hills are so inaccessible to Railroad travel that Hanbury testifies that she always drove out by carriage six miles, and Agent Bamford drove there with Knowlton. From the Page Subdivision to the Village Stores, Schools and Churches, the distance is about one mile in an air line. But the further difficulty in this case arises from the fact that these 27 lots are not building lots (except on paper). They are not at Clarendon Hills Station on the Boston & Providence Railroad, which fact Hanbury at the time knew or ought to have known

(Record, page 61). This tract of land was formerly the property of one Phillip Sowden—it is in form a parallelogram containing about 18 acres—topographically a basin (see Record, page 141)—formerly a skating-pond and is now only a cow-pasture (see Record 108 A. 7)—it is totally unfit for building lots (see page 60 A. 7).

MISREPRESENTATIONS AS TO DALE STREET.

Knowlton testifies that Hanbury stated and represented Dale Street as a beautiful street leading from the property to the Depot, a distance of *one block* of two or three minutes walk. Not one word of Knowlton's testimony concerning this Street or the representations made by Hanbury concerning it, is denied. On the contrary Hanbury corroborates and fully admits every part of the testimony of Knowlton. She testifies (Record, page 199 Q & A, 1st and 2nd) "Showed him where Dale Street was—told him it ran to the Depot—from the property to the Depot," and as an excuse for this misrepresentation, she says on oath:—

"I was not aware that he would have to drive 1½ miles to reach Clarendon Hills."

But which fact she says she never knew was so until after he filed his Bill in the Superior Court (see Record, page 199.)

We insist that this is a *material misrepresentation*, greatly affecting the value of vacant lots, and that Knowlton would have equal right of rescission whether this misrepresentation was made through ignorance or intent, and that appellant under the trust is entitled to the same.

The testimony of Surveyor Moses shows that Dale Street never has been laid out or constructed as a public street except from the property to the city line about 1,200 feet from the railroad, which last distance is through private property and only a path through the Willows, Alders, and Scrub-brush in the swale lands adjoining the Railroad track.

MISREPRESENTATION AS TO VALUATION.

It transpires that the consideration named in the Deeds from Page to Whiting and Whiting to Hanbury was false and untrue.—She says that she "did not tell him (Knowlton) about the consideration in the deeds," etc. (Record, page 197.)

He says she told him that she paid 10 cents cash, amounting to about $19,946 (see Record, page 292), and she nowhere in her testimony denies that she made this representation, but attempts to prove this to be the real value.

The evidence of Sowden and others shows the manipulations of Page, in subdividing this "Basin Lot" and conducting a sham auction sale in 1872 and by bidders, intending thereby to establish a fictitious value of about 10 cents per foot for trading purposes, also in furtherance of this scheme he had the lots entered on the Assessor's list for taxation at $100 a lot, and one lot actually transferred to Rodgers and currently reported at 10 cents per foot, throughout the neighborhood; but neither Page nor Rogers are called to testify or prove any actual sale at

such a price, but persons who have little or no knowledge are called to testify that "parties told them the prices." Chas. J. Page, the Treasurer of the Metropolitan Land Co., conducted the same scheme with the 50 acres purchased of Sowden. But on page 144, Sowden testifies "they *failed on it* and I bought some of it back at auction from ½ to 2½ cents per foot. "Six acres near my house, the best part of the farm"—he testifies page 156, ans. 11, "I can buy some of it less than I sold it for." Page 147, ans. 6 "I have two estates. I should not give one acre of my land for five acres of the Page Sub. land." Ans. 7 "I will sell the upper lot nearest the Depot for two cents. That is the highest lot I have got." Page 399, The Deed of the 27 lots contains 199,946 square feet or 4 and six-tenths acres at 10 cents a foot, $19,946. Sowden's valuation of the low central part is about ⅔ at $150, and ⅓ on the hill side at $250, amounting to $916 for the 27 lots. Page 155, ans. 5, "I think it will be farm property the next 20 years." He testifies (page 146, ans. 1) that he sold a house and two acres close by on Dale Street to Mr. Hammond for $1,000. He testifies, "The Cook place adjoining the Page Subdivision was sold. It fetched $4,000 for twelve acres all high and dry land, house and barn on it." "They want to sell the place right opposite the land in dispute—house, barn, orchard, and 24 acres offered for $7,000, but I think I can buy it for $5,000. My son went to buy it." Sowden's whole life and interests have been and are identified with buying and selling real estate in this exact locality. He owned these hills, 300 acres, and testifies that he built four houses himself and has complete knowledge

and we claim is a complete rebuttal of the sham auction prices which defendants Hanbury and Rorke here introduced.

Complainant introduces Witness Moses, the land surveyor, who tells the exact distance—roads and situation—a prominent citizen, one of the select men and on school committee many years. He has lived about 800 feet distant from the Page Subdivision 30 years and as a Real Estate agent has adjoining lots all these years for sale (see Record, page 66 A. 1). His complete knowledge of the land, the sales, prices and improvements, gives his valuation reliance and credibility (see Record, page 60). The valuation he places on the low bottom lots is one-eighth of one cent per foot and one cent and two cents on the higher hill-side lots, and total amount of about $1,150 for the 27 lots being at a retail valuation of 20 per cent. higher than Sowden.

The testimony shows Sowden and Moses, two Real Estate and Land dealers, living beside the Page Subdivision more than 30 years and not on speaking terms for 10 years, and yet they vary only about 20 per cent. in valuing the 27 lots. Both certainly knew of Page's schemes and sham sales; and Sowden testifies (Record, p. 154) "I know what kind of a man Page was."

Hanbury testifies "I showed him the deeds—I told him of the auction sales—I had no other criterion of value—gave him the map (Record, pp. 56 and 221, ans. 13), my criterion of value was the auction sales. I had no other criterion." All the testimony offered by defendants Hanbury and Rorke to prove value, appears to be founded

upon these *bogus auction sales*, as testified to by witnesses having no actual knowledge of value outside the report of these bogus estimates and sham sales.

C. R. Page testifies (page 98, ans. 6) "I have no personal knowledge. I have had no experience." "I am one of the owners of the unsold lots. Our prices are 6 to 12 cents."

McDonnald testifies (page 129, ans. 5) "I only know of the current reports." "I have no knowledge of my own. I should say the value is from 6 to 12 cents."

Holden testifies (page 93, ans. 4) "I know pretty near where these lots are located though I never was on the land. They have been taxed as high as 4 or 5 cents as I have been informed."

Eldridge testifies (page 115) "I am informed by one of the owners that the prices are from 6 to 12 cents. I have very little knowledge."

Homer testifies (page 119 A. 6) "I know of one lot of land having been sold at 10 cents per foot very near this land. Parties told me the prices."

Collins testifies (page 107 A. 3) "I have never been on this land. I have made inquiries about it. I should put the price 5 to 8 cents."

O. Sharp, the traveling cigar dealer and by-bidder at Page's auction sham (see his name in list of Sham buyer's Record, page 122) Record page 102 ans. 2, he testifies "I have been right on the lots—I suppose fifteen or twenty times. I saw "bona fide" sales at auction for 8 and 10 cents. I do not know a ditch through the land. I should call it a valley." He testifies that gas is burned in the

streets; but Eldridge who lives there, testifies, Record page 118, "It is 1¼ miles when gas is burned."

Herdman testifies Page 112, Ans. 10, "I cleaned out the ditch." "It is a great deal deeper than a man—you cannot stand in the ditch and see over Poplar Street."

No improvements have been made on it for over 30 years, except "the deepening of the ditch through the center, the partial construction of the streets across it, and one house built thereon."

(Record p. 58.)

By the testimony it is evident, that defendant Hanbury was deceived when she bought the lots. She relied on such testimony as the facts and statements of her main witnesses at Boston delineate, and she intended to sell to Knowlton by the same pictures and representations. (Record p. 191). She was grossly deceived herself as to the value, and especially the location of this property. She represented it as at "*Clarendon Hills*," *station on the Boston & Providence Railroad, and she admits that she so understood and told Knowlton.*

What value could such property have for building purposes—house lots?—property over one mile from the spot, where both parties supposed it was, with reference to railway advantages, when they made the exchange?

She was bound to know this fact and had known it for years. Knowlton had not seen the property, but relied on her representations.

He testifies, Record page 302, "Because of these re-"presentations I made the exchange—I believed them—I "believed the representations were true."

Martin testifies to Hanbury's conversation a day or two after signing the deeds. Record page 261. Hanbury said: "He (Knowlton) took my representations and my "word regarding that property and we made the sale; "it was between him and me and no one else. She (Han- "bury) said he took her word and didn't go there to see "it."

This testimony is nowhere denied—Hanbury corroborates it and testifies, Record page 195. "He seemed to "be ignorant of the neighborhood—he would not have "known about the property if I had not told him."

These facts are fully proven and admitted as to the location and character of these so called lots and the misrepresentations as to Dale Street leading only one block to the Station. Hanbury admits that she never paid any cash for the lands or lots, and that she took them in exchange for an equity, which added to the encumbrance made 10 cents a foot.

These misrepresentations of such material facts within all the authorities entitles complainant to a recission of the contract of exchange. *Thus situated the lands or lots are worth nothing above the encumbrance complainant has paid and the transfer of the Chicago property is wholly without consideration.*

BOSTON LETTER.

The letter of Oct. 9, 1882, (see Record page 402) was never offered in evidence and is no part of the testimony, yet the Court below has made it and his construction of it—an important element in the case.

On page 302, Knowlton testifies "that he learned de-

finitely at the Assessor's office that for three successive years Hanbury had by her personal application as a poor seamstress and widow with children, and the lots heavily mortaged, had the taxes abated under the poverty statutes of Massachusetts."

According to the testimony of Knowlton (which is not denied,) he occupied four days from Oct. 5th to 9th, in making these discoveries. At the time of writing this letter it appears reasonably certain that Knowlton well understood the fraud upon him by Hanbury and her crafty adviser, and that his only hope of recovery was to allay suspicion; and give no occasion to Hanbury for attempting to transfer the brick houses to some innocent purchaser for value. The files of the Superior Court show that Knowlton filed his bill against Hanbury and obtained an injunction immediately on his return to Chicago. It plainly appears that the Court overlooked these facts and circumstances when he impugned the motives of Knowlton for writing a letter to Hanbury from Boston, which indicated no discovery of fraud.

Knowlton's testimony and the file of the Supreme Court shows that upon his return from Boston, and prior to filing his bill to set aside the contract and deeds for the exchange of properties—he tendered to Hanbury a quit claim deed to the Boston property and demanded of her like deeds of the Chicago property.

Mr. Rorke has been counsel for Mrs. Hanbury since September 8, 1882. He was notified by the bill of Knowlton, November 3, 1882, of the fraud on her part; but previous to that time Hanbury testifies, Record page 176:

"Said attorney (Rorke) has informed me that it would "invalidate my title to have any one who owned the "(Chicago) property formerly have further to do with it," he is "art and part" with her; hence he is not a *bona fide* purchaser without notice.

All which is respectfully submitted.

THEO. E. DAVIS,

Sol'r for L. B. Shields, Adm. Appellant.

H. C. CADY,

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